

Capital Reporting Company
David Noble, Jr. vs. United States Postal Service 11-04-2011

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UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

----- :
DAVID NOBLE, JR., :
 :
Plaintiff, :
 :
vs. : Case No. DC-0752-11-0880-I-1
 :
UNITED STATES POSTAL :
SERVICE, :
 :
Defendant. :
----- :

Alexandria, Virginia
Friday, November 4, 2011

The following pages constitute the proceedings held in the above-captioned matter before JUDGE DANIEL MADDEN TURBITT, 1800 Diagonal Road, Alexandria, Virginia 22314, before Natalia Kornilova of Capital Reporting Company, beginning at approximately 9:42 a.m.

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<p style="text-align: right;">2</p> <p>1 A P P E A R A N C E S</p> <p>2 On behalf of the Plaintiff:</p> <p>3 DAVID NOBLE, JR., PRO SE</p> <p>4 1 Fence line Drive</p> <p>5 Gaithersburg, Maryland 20878</p> <p>6</p> <p>7 On behalf of the Defendant:</p> <p>8 STEPHEN W. FURGESON</p> <p>9 United States Postal Service</p> <p>10 Capital Metro Law Office</p> <p>11 8200 Corporate Drive</p> <p>12 Landover, Maryland 20785</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">4</p> <p>1 P R O C E E D I N G S</p> <p>2 THE COURT: Good morning.</p> <p>3 Today's date is November 4th, 2011. The U.S.</p> <p>4 Merit System Protection Board has before it the appeal</p> <p>5 of David Noble, Jr. v. U.S. Postal Service, MSPB Docket</p> <p>6 No. DC-0752-11-0880-I-1 from the action of the U.S.</p> <p>7 Postal Service which removed Mr. Noble from his Level 5</p> <p>8 city carrier position effective, I believe, July 22nd,</p> <p>9 2011.</p> <p>10 The person making such an appeal is entitled</p> <p>11 to a hearing before a Board official. My name is</p> <p>12 Daniel Turbitt. I have been delegated the authority to</p> <p>13 act as the Administrative Judge in these proceedings.</p> <p>14 The Appellant is appearing pro se or on his</p> <p>15 own behalf today and the Agency is represented by Mr.</p> <p>16 Stephen Furgeson.</p> <p>17 A person making such an appeal is entitled to</p> <p>18 a hearing before a Board official, and we will proceed</p> <p>19 today with the hearing.</p> <p>20 The purpose of this hearing is to provide</p> <p>21 both parties with an opportunity to ask questions, to</p> <p>22 cross examine witnesses and to make representations in</p>
<p style="text-align: right;">3</p> <p>1 C O N T E N T S</p> <p>2 WITNESSES DIRECT CROSS REDIRECT</p> <p>3 RE CROSS 40 50 69</p> <p>4 Antonio Jones 77 88 105, 111 107</p> <p>5 Sterling Colter 118 126 162 166</p> <p>6 William French 173 180</p> <p>7 Curtis Washington 204 206</p> <p>8 Nirlip Sidhu 210 213</p> <p>9 Alton Branson 217 222</p> <p>10 Leon Tucker 230 --</p> <p>11 David W. Noble, Jr. 240 --</p> <p>12</p> <p>13 E X H I B I T S</p> <p>14 EXHIBIT NO. MARKED RECEIVED</p> <p>15 Agency's:</p> <p>16 No. 1 ELM Manual -- 171</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">5</p> <p>1 support of their respective views.</p> <p>2 During two prehearing conferences in this</p> <p>3 matter, I approved witnesses; I identified the issues</p> <p>4 in this case, and the parties, I don't believe, came to</p> <p>5 any stipulations; is that correct?</p> <p>6 MR. FURGESON: That's correct, Your Honor.</p> <p>7 THE COURT: Okay. The parties are informed</p> <p>8 that opening and closing statements will not be</p> <p>9 necessary.</p> <p>10 Before we go to the first witness, are there</p> <p>11 any procedural matters?</p> <p>12 MR. FURGESON: Your Honor, I just want to be</p> <p>13 clear. I have sent the original Agency file on the 7th</p> <p>14 of September. There were some mistakes in the table of</p> <p>15 contents. I re-sent that on the 23rd with the right</p> <p>16 contents. I want to make sure that you got that</p> <p>17 revised --</p> <p>18 THE COURT: When did you sent the revised</p> <p>19 one, sir?</p> <p>20 MR. FURGESON: Well, along with the</p> <p>21 prehearing submission on the 23rd of September.</p> <p>22 THE COURT: I got your prehearing submissions</p>

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6	<p>1 on September 23rd. 2 MR. FURGESON: Yeah. It was attached to 3 there, as well. 4 THE COURT: Okay. Well, I have received that 5 information. Is that what you mean? 6 MR. FURGESON: Yeah. If you received it, I 7 guess the revised file. The revised Agency file that 8 was originally sent on the 7th of September. If not, 9 I've got it here, but I just wanted to be sure we're 10 playing from the same sheet of music. 11 THE COURT: Okay. What I received from you, 12 sir, on the 7th, which is your response to the 13 acknowledgment order -- 14 MR. FURGESON: Yeah. 15 THE COURT: -- to the appeal. And then on 16 the 23rd, I received your prehearing submissions. 17 MR. FURGESON: And a revised -- the response 18 was advised because it did not match -- the table of 19 contents, I noticed, did not match what I sent on the 20 7th with the exhibits. 21 THE COURT: Okay. So looking at what we have 22 on the --</p>	8	<p>1 THE COURT: Okay. I would say that. 2 Mr. Noble, did you receive that? 3 MR. NOBLE: I'm sorry, did I receive what? 4 THE COURT: The two things that Mr. Furgeson 5 just mentioned. The first one in the prehearing 6 submission is the revised, the response and then what 7 he submitted -- I think it was -- I think he submitted 8 it yesterday. 9 MR. NOBLE: Uh-huh. 10 THE COURT: It was a revision to Tab 4H of 11 the Agency's exhibits. 12 MR. NOBLE: Well, I got some -- I got some 13 material from Mr. Furgeson, and I haven't had a chance 14 to look at it yet. 15 MR. FURGESON: I sent it to him -- you know. 16 I sent him the copies on the 23rd. I sent copies of 17 that; I also sent him yesterday -- he said he didn't 18 receive the missing page, so I re-sent it to him with 19 the missing page. 20 THE COURT: Okay. All right. Is there 21 anything else, Mr. Furgeson? 22 MR. FURGESON: Not from me right now, no.</p>
7	<p>1 MR. FURGESON: There were three prehearing 2 exhibits, prehearing submission exhibits, and then 3 there were several exhibits in the Tabs 4A through 4H. 4 THE COURT: Okay. I have a couple copies of 5 all of them, yeah, going up to 4H. 6 MR. FURGESON: Yeah. And that was -- again, 7 that was revised and resubmitted for -- to match up 8 with 9 THE COURT: Okay. 10 MR. FURGESON: And, also, I noticed I 11 submitted lately like yesterday or the day before a -- 12 I withdrew Exhibit 3 for the prehearing submission. 13 THE COURT: Okay. 14 MR. FURGESON: And I had -- I also at Tab 4H, 15 I didn't have it. At the time I submitted it, I didn't 16 have this, the signature page of that two-page letter, 17 and I sent that to replace Tab 4H. 18 THE COURT: Okay. 19 MR. FURGESON: And my apologies for the 20 confusion, but I just wanted to make sure that was --we 21 were working from the same sheet of music there, so to 22 speak.</p>	9	<p>1 THE COURT: Okay. 2 Mr. Noble? 3 MR. NOBLE: I printed out a lot of material 4 that was in a repository yesterday. I came up with 5 some miscellaneous materials that belonged to other 6 cases. 7 THE COURT: You got this in what repository, 8 sir? 9 MR. NOBLE: The electronic repository that 10 may be accessed online by litigants. 11 THE COURT: I don't know -- I'll have someone 12 take a look at this. 13 MR. NOBLE: Okay. One of them was in the 14 section labeled for a document I had submitted and 15 properly labeled. And the document that I had 16 submitted was not in the electronic repository. 17 THE COURT: Okay. My staff has said that 18 you've been calling after each time you faxed 19 something. Did you call them and go through each page, 20 as well, with this? 21 MR. NOBLE: No. Because this is something I 22 submitted way back a month ago on October 7th.</p>

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10	<p>1 THE COURT: Okay.</p> <p>2 MR. NOBLE: And at one time it was in the</p> <p>3 electronic repository. It's been replaced by one of</p> <p>4 those documents.</p> <p>5 THE COURT: Where specific -- so this is what</p> <p>6 it will say --</p> <p>7 MR. NOBLE: Yes.</p> <p>8 THE COURT: -- instead of this document? We</p> <p>9 have these documents?</p> <p>10 MR. NOBLE: Or one of those documents.</p> <p>11 THE COURT: Mr. Furgeson, why don't you take</p> <p>12 a -- does Mr. Furgeson have a copy? Do you have a</p> <p>13 copy, Mr. Furgeson?</p> <p>14 MR. FURGESON: I don't know what you are</p> <p>15 talking about, sorry.</p> <p>16 THE COURT: All right.</p> <p>17 MR. FURGESON: I don't recall it. They</p> <p>18 probably sent it to me, but I just don't recall it now.</p> <p>19 I don't know if I have it at the moment.</p> <p>20 THE COURT: Okay. We will go off the record</p> <p>21 for one second. I am going to make a copy this and</p> <p>22 I'll provide a copy.</p>	12	<p>1 your stuff is correctly in there.</p> <p>2 MR. NOBLE: Okay. Thank you.</p> <p>3 Is it the Judge's intention to close the</p> <p>4 record at the end of the hearing?</p> <p>5 THE COURT: Correct, yes.</p> <p>6 MR. NOBLE: Okay. Well, I have a couple of</p> <p>7 brief motions I'd like to present before the close of</p> <p>8 the record.</p> <p>9 THE COURT: Okay. One thing, you don't have</p> <p>10 to stand up; you may remain seated.</p> <p>11 MR. NOBLE: But I've gotten into the habit of</p> <p>12 standing up, so...</p> <p>13 THE COURT: Okay. And I'm letting you know</p> <p>14 you don't have to.</p> <p>15 MR. NOBLE: I understand.</p> <p>16 THE COURT: Okay.</p> <p>17 So you have some motions. Go ahead?</p> <p>18 MR. NOBLE: Okay. The first concerns the</p> <p>19 interrogatory responses that the Agency provided on</p> <p>20 Tuesday. Their Exhibit YY, you know, in the package of</p> <p>21 exhibits that I sent yesterday, and I have three</p> <p>22 problems with the interrogatory responses.</p>
11	<p>1 Do you have a copy of this, Mr. Noble, of</p> <p>2 your own?</p> <p>3 MR. NOBLE: Oh, yes.</p> <p>4 THE COURT: We'll go off -- I'll make a copy</p> <p>5 of this and we'll be right back.</p> <p>6 (Short recess.)</p> <p>7 THE COURT: Okay. We're back on the record.</p> <p>8 I have just provided a copy of what Mr. Noble provided</p> <p>9 to me. Let the record reflect it is what is at Tab 18</p> <p>10 of the file, and this is Mr. Noble's response to me.</p> <p>11 Yeah, I thought I had seen it. I have a correct copy</p> <p>12 in my record file. I mean, I accessed it. My staff</p> <p>13 accessed it through the E-filing system. I thought</p> <p>14 that this did look familiar to me. This is your</p> <p>15 response to the harmful error allegation, and providing</p> <p>16 me with a specific rule, regulation, the procedures on</p> <p>17 that.</p> <p>18 MR. NOBLE: Yes.</p> <p>19 THE COURT: I have a copy already. Just let</p> <p>20 the record reflect it is on Tab 18. And I don't have</p> <p>21 the other thing that you submitted, but I had my staff</p> <p>22 -- they're taking a look at it now to make sure that</p>	13	<p>1 The first is that the interrogatories were</p> <p>2 not answered under oath.</p> <p>3 The second is that the response to</p> <p>4 Interrogatory No. 2 is incomplete.</p> <p>5 And the third is that the Postal Service</p> <p>6 didn't answer the question I posed as Interrogatory No.</p> <p>7 1, but, instead, answered a somewhat related question.</p> <p>8 I move, therefore, that the Judge order the Postal</p> <p>9 Service to provide revised responses to the</p> <p>10 Interrogatories No. 1 and 2 to answer the specific</p> <p>11 question that I posed under Interrogatory No. 1, to</p> <p>12 give a complete answer to Interrogatory No. 2 and to</p> <p>13 answer both of those interrogatories, as well as</p> <p>14 Interrogatory No. 9 under oath.</p> <p>15 THE COURT: Mr. Furgeson?</p> <p>16 I meant to do this. Let me interrupt for one</p> <p>17 second, and that is that there are two individuals in</p> <p>18 the hearing. These are public proceedings. I would</p> <p>19 just like you to identify yourselves, please?</p> <p>20 MR. NOBLE: Zack Noble.</p> <p>21 THE COURT: Okay.</p> <p>22 MS. AHEARN: Michelle Ahearn.</p>

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14	<p>1 THE COURT: Okay. Again, the proceedings are 2 public. You are welcome to attend them. However, you 3 are not allowed to discuss the testimony that you hear 4 from the witnesses until after this hearing is ended. 5 You cannot discuss it even amongst yourselves. If you 6 keep it to yourself, wait until the hearing is over and 7 then you can talk about it. Okay? Is that clear? 8 MR. NOBLE: Yes. 9 THE COURT: Thank you. 10 Mr. Furgeson, would you please respond to the 11 Appellant's -- 12 MR. FURGESON: I believe we responded. I'm 13 not sure exactly what he's saying simply are deficient. 14 THE COURT: Okay. Were your responses under 15 oath? 16 MR. FURGESON: Huh? 17 THE COURT: Were your -- 18 MR. FURGESON: They were not under oath. 19 THE COURT: Okay. Who -- let's take a look 20 at them. Okay. What about No. 2? He says it is 21 incomplete. Why don't you state what the interrogatory 22 is. Let's go one at a time. Interrogatory No. 1 in</p>	16	<p>1 THE COURT: Okay. Mr. Furgeson, are you 2 willing to state on the record that the Postal Service, 3 for the time period in question, for the region in 4 question, has not removed another individual for the 5 same type of offenses that was charged against Mr. 6 Noble or an individual who is -- occupied the same 7 position who has more than 30 years of service? 8 MR. FURGESON: That's the information I have. 9 I am willing to stipulate that the information provided 10 to me; I didn't research it personally, but, again, I 11 think one of our concerns was, you know, the lack of 12 time for me to follow up and to verify this with -- you 13 know, with people and get that oath was just not 14 possible. But I am willing to stipulate that this is 15 the information that was provided. As far as I know 16 there are no other employees that were similarly 17 situated to Mr. Noble who had more than 30 years of 18 service and an unblemished record who were terminated. 19 THE COURT: Okay. Are you willing to state 20 that under oath to the best of your knowledge? 21 MR. FURGESON: To the best of knowledge. 22 THE COURT: Okay. Your request for</p>
15	<p>1 the record, why don't you state what it is, Mr. Noble? 2 MR. NOBLE: Interrogatory No. 1 asks the 3 Postal Service to identify any and all city letter 4 carrier employees of the Washington, D.C. Post Office 5 who have been removed since January 1st, '06, that's as 6 modified by the Judge, based on a charge or charges of 7 unsatisfactory attendance -- excuse me, that's not as 8 modified by the Judge. 9 THE COURT: I believe I modified it for one 10 year. 11 MR. NOBLE: Right. Based on a charge or 12 charges of unsatisfactory attendance and/or AWOL, and 13 who had at the time of the removal -- who had at the 14 time of the removal action (a) 30 or more years of 15 Postal employment and (b) an unblemished disciplinary 16 record. Rather than answering that interrogatory, which 17 would have had apparently identified only me, the 18 Postal Service identified one, two, three, four -- four 19 letter carriers who had been removed for AWOL, none of 20 whom had 30 or more years of service and none of whom 21 had an unblemished disciplinary record at the time the 22 discipline was taken.</p>	17	<p>1 Interrogatory 1, I believe, has now been satisfied, so 2 let's move on to No. 2. You said it was incomplete. 3 Okay, go ahead. 4 MR. NOBLE: Interrogatory No. 2 asks the 5 Postal Service to identify employees who have been 6 charged with the same offense, that is AWOL, as the 7 Appellant within the last year and who had been given 8 discipline less than removal. And the Postal Service 9 has provided a list that runs alphabetically, A through 10 F, and the remainder of F, after Freitag to Z is not 11 included. 12 MR. FURGESON: We did -- I did provide him 13 yesterday with the rest of the list that we had and 14 sent it to him by e-mail and it included not only 15 letter carriers. We used the discipline log, that's 16 the best we could do. We pulled the discipline log and 17 identified clerks and letter carriers and we provided 18 that to you. 19 THE COURT: Did you receive a copy of that 20 yesterday, Mr. Noble? 21 MR. NOBLE: Well, I received -- I received a 22 copy of it, you know, it was difficult to read because</p>

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18	1 -- 2 THE COURT: Mr. Furgeson, do you have an 3 original of that? 4 MR. FURGESON: I'm trying to remember. I 5 thought I brought a copy. I don't see it right now. 6 THE COURT: And, Mr. Noble, can we see the 7 copy of the one that you have that you received from 8 the Agency? 9 THE COURT: Thank you. This is what you 10 received from the Agency? 11 MR. NOBLE: Yes. 12 MR. FURGESON: Can I see that, Your Honor? 13 THE COURT: This is clear as a bell. I don't 14 understand. 15 MR. NOBLE: It only runs through F. 16 THE COURT: Okay. But the one that you're 17 missing, what is the one that you said is unclear? 18 MR. NOBLE: This is what's missing, from F 19 through Z. 20 THE COURT: And that's what I'm asking for, 21 sir. Do you have a copy of that one that the Agency 22 --	20	1 THE COURT: That would be great. 2 Okay. Mr. Noble, that should take care of 3 your second interrogatory. 4 And would you state under oath, Mr. Furgeson, 5 that, to the best of your knowledge that is a -- that 6 list is complete? 7 MR. FURGESON: To the best of my knowledge, 8 Your Honor, and the limited time frame that we were 9 given and, yes, I do have a copy. 10 THE COURT: Okay. 11 MR. FURGESON: Here it is right here. 12 THE COURT: All right. Can I -- 13 MR. FURGESON: Sure. 14 THE COURT: Why don't you give that to Mr. 15 Noble, and, Mr. Noble, can you read that? 16 MR. NOBLE: Yeah. This isn't the way it came 17 through. 18 THE COURT: All right. 19 Mr. Furgeson, please give me a copy of that? 20 I will make a copy a copy of that right now, and give 21 it to Mr. Noble, and we will go off the record for one 22 second.
19	1 MR. NOBLE: I have a copy, and I looked at it 2 for some time yesterday. It didn't appear to be the 3 end of this list. 4 THE COURT: Okay. Can I please see that? 5 That's what we're looking for right now. 6 MR. FURGESON: Okay. I'm sorry. I don't 7 have that with me. I thought I included it. At the 8 moment, Your Honor, it escapes me. But I did send a 9 copy, and I thought I brought a copy with me, but I 10 don't see it in the log. 11 What it included was all the -- it was a 12 discipline log we had for attendance and it had for -- 13 it had the mail handlers, clerks and letter carriers, 14 and it showed the discipline. 15 THE COURT: Okay. I'm directing you to re- 16 send that list to the Appellant at the end of this 17 hearing today. 18 MR. FURGESON: Okay. 19 THE COURT: You send it and I want you to 20 send as clear a copy as you can. All right? 21 MR. FURGESON: I will -- if given the time, 22 I'll just go ahead and mail it as well as e-mail it.	21	1 MR. FURGESON: Okay. 2 (Short recess.) 3 THE COURT: Okay. We're back on the record. 4 We have now answered Interrogatory No. 2. Okay. And 5 then you said you had a concern with No. 9. 6 MR. NOBLE: Only that it wasn't answered 7 under oath, Your Honor. 8 MR. FURGESON: We will -- Your Honor, to the 9 best of my belief and knowledge, it is an accurate 10 statement for No. 9. 11 THE COURT: Okay. All right. That takes 12 care of that motion. 13 You said you had another motion, Mr. Noble? 14 MR. NOBLE: Yeah. I have two more brief 15 motions, Your Honor, however, I'd like to -- I'd like 16 to get this appended, I guess, to Exhibit YY so that we 17 have a complete record. 18 THE COURT: Okay. 19 Do you have an objection, Mr. Furgeson, to 20 appending this to what you just copied? 21 MR. FURGESON: I haven't seen that. I don't 22 know what he's talking about. The only exhibits I have

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22	<p>1 is what was approved prior to this. I don't know of 2 any other exhibit, but I have no objection to him 3 appending to whatever he has. 4 THE COURT: Okay. This is now -- your 5 request is granted. This has now been appended to 6 Exhibit YY. 7 Mr. Noble? 8 MR. NOBLE: The second motion is, as I 9 indicated yesterday, I would like to add an affirmative 10 defense, namely that the removal action was initiated 11 by a higher-level supervisor rather than by my 12 immediate supervisor. 13 THE COURT: Okay. I did receive something 14 yesterday that said that you wanted to add an 15 additional affirmative defense. The e-mail didn't say 16 what that was. You're now clarifying for the record 17 what that affirmative defense is? 18 MR. NOBLE: Yes. 19 THE COURT: Okay. You believe that Antonio 20 Jones was, in fact, the actual deciding official; is 21 that correct? 22 MR. NOBLE: That's -- that's what I</p>	24	<p>1 Colter can remember anything about the substance of 2 what they said to each other about the removal in 3 calendar year 2011. 4 THE COURT: Mr. Furgeson? 5 MR. FURGESON: Your Honor, I provided the 6 accurate responses. They did recall having 7 discussions. They did indicate that they recalled the 8 procedural issues of, you know, that it was going 9 forward, but beyond the substantive issues of 10 discussing anything about the case, they had no more 11 recollection than what they had, and that's what we 12 provided. 13 THE COURT: The Appellant's request for -- 14 that the Agency be sanctioned by reversing the removal 15 action is denied. So I granted the Appellant's first 16 motion this morning regarding all of the 17 interrogatories. 18 I granted the Appellant's second motion this 19 morning regarding the additional affirmative defense, 20 and I just denied the Appellant's motion for sanctions. 21 Is there anything else before we go forward 22 with the testimony of the witnesses?</p>
23	<p>1 understand from the discovery material the Postal 2 Service provided to me yesterday. 3 THE COURT: Okay. That is added as an 4 additional affirmative defense. 5 Any objection, Mr. Furgeson? 6 MR. FURGESON: Yeah. I don't believe that's 7 a proper affirmative defense and I don't think it's any 8 -- 9 THE COURT: Okay. We'll find out if Mr. 10 Jones acted inappropriately in any way, shape, or form 11 in terms of assessing what decision to impose in this 12 case, and whether Mr. Jones interposed himself in terms 13 of the penalty, and whether there was a due process 14 violation. Okay? 15 MR. FURGESON: Okay. 16 THE COURT: Go ahead. 17 MR. NOBLE: The last motion is to order the 18 Postal Service to cancel the removal action as a 19 sanction for obviously false responses to the 20 interrogatories I submitted on October 14th, the 21 answers to which the Postal Service claims that none of 22 our four witnesses, Jones, Washington, French and</p>	25	<p>1 MR. FURGESON: Yes, Your Honor -- 2 THE COURT: Okay. You said you had three 3 motions. 4 MR. NOBLE: Yes, I had a couple. 5 THE COURT: First, you said you had a couple 6 and then you had three. 7 MR. NOBLE: I don't have any more motions. 8 THE COURT: Okay. 9 MR. NOBLE: I just have a question. In the 10 order of the second prehearing conference, you ordered 11 the Postal Service to come up with a couple of 12 stipulations, and I am most interested in the one about 13 payment for the five holidays. 14 THE COURT: Okay. 15 MR. NOBLE: I haven't -- 16 THE COURT: I did direct the Agency to -- 17 MR. FURGESON: Yeah. I thought it was just 18 for the one holiday, and we did indicate that we had -- 19 our records show that he was paid for -- my record is 20 that it was the Veterans holiday. 21 MR. NOBLE: I understood it to be for all 22 five holidays, Your Honor.</p>

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26	<p>1 MR. FURGESON: I wrote it down as -- 2 THE COURT: Let me see what I said. Okay. 3 Where is this in the prehearing conference summary, Mr. 4 Noble? It's a rather lengthy. 5 MR. NOBLE: The second one. 6 THE COURT: What page is that? What page is 7 that? 8 MR. NOBLE: I'm trying to find it. 9 THE COURT: This is in the -- my summary for 10 the second prehearing conference is about 20 pages long 11 so... 12 MR. NOBLE: I think it might be page 13. 13 Thirteen-fourteen. I may be wrong. Yeah. It's the 14 second half of page 13 and the top half of page 14. 15 THE COURT: I instructed both parties to 16 submit a joint stipulation on whether the Agency paid 17 the Appellant either holiday pay or any other type of 18 pay for the four specific holidays listed in the 19 interrogatory. 20 So, Mr. Noble, it wasn't just the Agency, it 21 was both parties. It was a joint stipulation. 22 What was your proposed stipulation as to the</p>	28	<p>1 misread it or misunderstood it. I think I only looked 2 at the Veterans holiday. I don't believe at this point 3 in time that -- I think we claim he was paid, but I am 4 not absolutely certain. So I would have to have more 5 time to verify that. 6 THE COURT: Okay. You did find out for the 7 Veterans holiday? 8 MR. FURGESON: Your Honor, I can't remember. 9 I think that we said we paid him, but- 10 THE COURT: That wasn't one of the four 11 holidays. The holidays were Columbus Day, 12 Thanksgiving, Christmas holiday in 2010 and New Years 13 holiday in 2011. There's no Veterans Day even 14 mentioned. 15 MR. FURGESON: Well, I'm not sure how I -- 16 but I did not-I did not talk to Mr. Noble about it. He 17 did not call me about stipulating. I did not follow 18 through on verifying it. 19 THE COURT: Okay. Both parties did not 20 follow my instructions on that. 21 As to my ruling on Interrogatory 12, I 22 requested both parties to file a joint stipulation.</p>
27	<p>1 four holidays, Mr. Noble? 2 MR. NOBLE: That the Postal Service didn't 3 pay me for any of the holidays and that the reason the 4 Postal Service didn't pay me was that -- 5 THE COURT: Oh, oh, we only have a no; we 6 only have a stipulation not a reason behind. All we 7 have is I need a stipulation on whether the Agency did 8 or did not pay you holiday pay, and, if not, what type 9 of pay it was for those four specific holidays listed 10 in the interrogatory? 11 MR. NOBLE: My joint stipulation would be 12 that the Postal Service didn't pay me for any of the 13 holidays. 14 THE COURT: Okay. And you received no pay? 15 MR. NOBLE: Correct. 16 THE COURT: You were unpaid for those four 17 holidays? 18 MR. NOBLE: Correct. 19 THE COURT: Okay. Mr. Furgeson? 20 MR. FURGESON: I am not prepared to stipulate 21 to this. I can do it if given some time, but today I 22 cannot stipulate to this. It didn't -- I think I maybe</p>	29	<p>1 That obviously didn't happen. 2 MR. FURGESON: You're right, Your Honor. 3 THE COURT: So, I will allow both parties an 4 opportunity at some point during the break, and, Mr. 5 Furgeson, if you can get somebody from HR -- 6 I mean, this should have been done already. If we can 7 get somebody to give us the information on this prior 8 to the end of this hearing that would be good. The 9 next break, I want you to call HR and I want you to 10 find out what the Agency has for the records for the 11 four days: Columbus Day, Thanksgiving, Christmas 12 holiday in 2010 and New Years holiday in 2011. 13 My understanding, Mr. Noble, is that that was 14 the four days. So they're not for more days than just 15 -- the Christmas holiday is just for December 25th, in 16 other words. It's not for other days in or around 17 December 25th; is that correct? 18 MR. NOBLE: Yes. 19 THE COURT: Okay. Is that understood to both 20 parties now, clear about what it is that I instructed 21 them to do? 22 MR. FURGESON: Your Honor, it's clear, and I</p>

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30	<p>1 can assure you -- I can't speak for Mr. Noble, I 2 assure you it was not intentional. It's easy something 3 -- given time, easy to do. 4 THE COURT: Okay. 5 MR. FURGESON: However, the -- you know, the 6 time -- time frame and all the flurry of activity, 7 things get missed. 8 THE COURT: I understand. 9 Now, Mr. Noble has brought it up again and so 10 we're going to try to remedy that. 11 Mr. Noble, do you have any evidence to 12 support your belief that you did not receive pay for 13 any of those four days? 14 MR. NOBLE: Only my sworn testimony. 15 THE COURT: No. Do you have anything other 16 than that? 17 MR. NOBLE: No. 18 THE COURT: Okay. Do you have a pay stub 19 that would indicate that you received X amount of money 20 for that period of time you worked, for example, do you 21 have a worksheet that shows how many hours you worked 22 that week, and then a pay stub that would reflect how</p>	32	<p>1 THE COURT: You can do it -- I'll direct it 2 right now. Go ahead. 3 MR. NOBLE: I object to the Judge's ruling on 4 that motion. 5 THE COURT: Okay. And I've already done that 6 for you in my order that I issued yesterday on 7 everything else that you've been objecting to on all 8 the motions and all the objections, I stated that you 9 have a standing objection on anything that I've ruled 10 against you so far. 11 I know that most of the things I've granted 12 in terms of your motions for motion to compel and 13 granted most of your motions to postpone, but in 14 anything that I ruled not in your favor, I have written 15 for the record your standing objection. You made an 16 objection for the record as to the ruling I just made 17 denying -- I granted three of your motions this 18 morning, I believe, and I denied -- I'm sorry, I 19 ranted two of your motions this morning and then I 20 denied one. Your objection is noted. 21 MR. NOBLE: Thank you. 22 THE COURT: Is there anything else?</p>
31	<p>1 much money you received for that same week? 2 MR. NOBLE: Not that I have ready access to, 3 Your Honor. 4 THE COURT: Okay. That is something that you 5 can get. I'm sure you have access to your own pay 6 stubs and you have access to your own time sheets. So, 7 while Mr. Furgeson will be calling HR to get that 8 information, I expect you to be getting that 9 information, as well, so that both parties can file a 10 joint stipulation as directed back on August 20th, 11 2011. 12 Okay. Is there any other objection or 13 comment? Mr. Noble? 14 MR. NOBLE: Just to clarify, Your Honor. 15 While I have appeared before the MSPB before, I'm not - 16 - I am certainly am not expect in the MSPB procedures, 17 and I want to make certain that I object when it is 18 appropriate to do so and not object when it is not 19 necessary for me to do so. In order for me to preserve 20 my rights on appeal, do I move to object to the Judge's 21 ruling on the sanction for false responses to the 22 interrogatory?</p>	33	<p>1 MR. NOBLE: No, sir. 2 THE COURT: Mr. Furgeson? 3 MR. FURGESON: No. I mean, you're just 4 granting as far as the holiday, whether he's paid or 5 not, that's just a response to discovery. You're not 6 admitting that necessarily into evidence at this point; 7 is that correct? 8 THE COURT: I'm not admitting what? I'm not 9 -- 10 MR. FURGESON: Well, you said -- you 11 instructed us to find out whether he was paid or not 12 paid for Columbus Day, Thanksgiving Day, Christmas Day 13 of 2010 and New Years holiday which was -- and your 14 instruction was that we were to come up with a joint 15 stipulation. I understand that those things are not 16 admitted necessarily as relevant and will go to 17 evidence at this point? 18 THE COURT: I don't know. Honestly, I don't 19 know if they're relevant or not. I just wanted to -- I 20 thought -- quite frankly, I thought it would be 21 something that could be easily rectified. We could 22 find out very quickly from records --it wasn't that</p>

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34	<p>1 long ago. It was less than a year ago. I thought we 2 could go to HR, pick up the phone and say, would you 3 please take a look at Mr. Noble's records and see if he 4 did work on these four days and if he did work on these 5 four days, is there any evidence about what he's paid. 6 It didn't seem like it was going to be that difficult. 7 MR. FURGESON: It should not be, Your Honor. 8 We'll try to work on it. 9 THE COURT: Okay. 10 MR. NOBLE: Just to clarify, Your Honor, the 11 issue is not whether I worked on a holiday and got paid 12 for it, the issue is whether I didn't work on the 13 holiday, which I didn't, and didn't get holiday leave 14 pay for which I was eligible. 15 THE COURT: Okay. So you believe that you 16 are entitled to receive pay for four days that you did 17 not work? 18 MR. NOBLE: Correct. 19 THE COURT: Okay. Let's make sure that he 20 did -- and you are stipulating that you did not work on 21 any of those four days? 22 MR. NOBLE: Correct.</p>	36	<p>1 MR. FURGESON: Well, I mean, that's the 2 contractual language. It is what it is. I think this 3 goes to whether or not he's filed grievances on it and 4 maybe we did violate it; I don't know; I have no idea. 5 But I'm not sure it has any relevance here, but 6 nevertheless we can certainly find out if he was paid 7 or not. Whether we violated the contract or not is 8 something that's a factual issue that may or may not 9 have already been healed through the grievance process, 10 and, you know, arbitration status, so I can't really 11 comment. 12 THE COURT: Have you grieved that -- have you 13 grieved this? I know that you filed a number of 14 grievances, Mr. Noble. I know that they've gone 15 through the cut system, some of them. Did you file a 16 grievance? And I know that you filed appeal to the 17 Board on your holiday pay. Was it these specific 18 holidays, as well, the ones that were dismissed for 19 lack of -- it was a case dismissed for lack of 20 jurisdiction? 21 MR. NOBLE: The case that was dismissed for 22 lack of jurisdiction --</p>
35	<p>1 THE COURT: Okay. So we don't need to look 2 at whether he was working on those days or not. We 3 have a stipulation that he did not work on those days. 4 We just need to -- and you believe that this was 5 covered by the collective bargaining agreement. Is 6 that correct, Mr. Noble? 7 MR. NOBLE: Yes, Your Honor. 8 THE COURT: Okay. Well, can you provide a 9 provision in the collective bargaining agreement that 10 specifically states that? 11 MR. NOBLE: I believe that's in Exhibit A, 12 page 4. 13 THE COURT: Okay. And what does it state? 14 MR. NOBLE: It states in Article XI, Section 15 2, "To be eligible for holiday pay an employee must be 16 in a pay status the last hour of the employee's 17 scheduled work day prior or the first hour of the 18 employee's scheduled work day after the holiday." And 19 I was in a pay status either the last hour of the 20 previous day or the first hour of the next scheduled 21 day for each of those four holidays. 22 THE COURT: Mr. Furgeson?</p>	37	<p>1 THE COURT: There were several. 2 MR. NOBLE: -- involved the first three of 3 the five holidays. So Columbus Day, Veterans Day and 4 Thanksgiving Day. It didn't include Christmas and New 5 Years Day. 6 THE COURT: Okay. And are you asking me to 7 interpret the collective bargaining agreement to find 8 out whether you were or were not properly paid for 9 these days? 10 MR. NOBLE: Well -- 11 THE COURT: Let me back up. Let me back up. 12 Did you file a grievance on this, sir? 13 MR. NOBLE: I tried to file a grievance. 14 THE COURT: That would be the proper avenue 15 of address. 16 MR. NOBLE: Well, Your Honor, it's slightly 17 more complicated than that. In Exhibit J -- 18 THE COURT: You know, I'm not going down this 19 -- I'm not going down the cite road. I have a removal 20 action before me. I'm not going to get into the 21 holiday pay. I've asked you both to stipulate to it. 22 I'm going to receive a stipulation, whatever it is, as</p>

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38	<p>1 to this matter. I don't need to spend a lot of time on 2 this. It's four holidays. What I have before me 3 witnesses ready to testify about the removal action in 4 this case. I'm not going to hear any more information. 5 You made an objection as to this matter, and you 6 accused the Agency of not filing a stipulation in 7 violation of my order. 8 That was a misstatement about what I said. 9 What I said was that both parties had to come up with a 10 joint stipulation, so both parties are in violation of 11 my order. Both parties need to fix that. I'm not 12 spending any more time on it. 13 You are both in violation of my order to come 14 up with a joint stipulation on this issue. I'm not 15 spending time at the hearing discussing why you 16 violated my order. Come up with a stipulation, as I 17 ordered you to do, on October 20th. 18 Please sit down and let's move to the 19 testimony of the hearing. 20 MR. NOBLE: Okay. 21 THE COURT: Are you Mr. Jones? 22 MR. JONES: Yes, sir.</p>	40	<p>1 WHEREUPON, 2 ANTONIO JONES 3 called as a witness, having been first duly sworn, was 4 examined and testified as follows: 5 DIRECT EXAMINATION 6 BY MR. FURGESON: 7 Q Mr. Jones, what is your current position with 8 the Postal Service? 9 A I'm a supervisor of distribution operations. 10 Q Okay. And was there a time when you were in 11 an acting position at the Friendship Station? 12 A Yes, I did. 13 Q And when was that? 14 A January 22nd through April 15th, 2001. 15 Q And what was your position there? 16 A Acting station manager. 17 Q Okay. And do you know the complainant? 18 A Yes, I do. 19 Q Okay. And was he an employee there at that 20 office? 21 A Yes. 22 Q Now, on or about January 2011, was the</p>
39	<p>1 THE COURT: Before we proceed with your 2 testimony, I needed to ask you whether you have an 3 objection to taking an oath. 4 MR. JONES: No, Your Honor. 5 THE COURT: Okay. Please stand and raise 6 your right hand and repeat after me. I -- state your 7 name, sir. 8 MR. JONES: I, Antonio Jones -- 9 THE COURT: Do solemnly swear -- 10 MR. JONES: -- do solemnly swear -- 11 THE COURT: -- to tell the truth -- 12 MR. JONES: -- to tell the truth -- 13 THE COURT: -- the whole truth -- 14 MR. JONES: -- the whole truth -- 15 THE COURT: -- and nothing but the truth -- 16 MR. JONES: -- and nothing but the truth -- 17 THE COURT: -- so help me God. 18 MR. JONES: -- so help me God. 19 THE COURT: Thank you, sir. Please be 20 seated. 21 Mr. Furgeson, your witness. 22 MR. FURGESON: Okay.</p>	41	<p>1 Appellant at work during that period? 2 A No, he wasn't. No, he wasn't. 3 Q And did you attempt to have him return to 4 work? 5 A Yes. 6 Q And how did you attempt to do that? 7 A I sent him a return to duty letter. 8 Q Thank you. I'm going to show you what's in 9 Tab 4, Your Honor, and that was the one that was 10 replaced recently. I'll show you this letter here, Mr. 11 Jones. Can you tell me if you've seen this letter 12 before? 13 A Yes, I have. 14 Q And what is this letter? 15 A This is the return-to-duty letter that I 16 sent. 17 Q Okay. And did the Appellant respond? 18 A Yes, he did. 19 Q I'm going to ask you, if you would, to took 20 at -- this is the Agency file, and ask you to look at 21 Tab 4G. You see it's on the side there? 22 A (Examining the document.)</p>

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42	1 Q Okay. Do you see that? 2 A Yes, I did. 3 Q And what is this? Can you identify that for 4 the record? 5 A This is what Mr. Noble sent me in the mail 6 as his response to my return-to-duty letter. 7 Q And was this letter acceptable? 8 A I accepted part of it. I accepted the 3971 9 that he sent a copy of that was approved by Mr. French, 10 which, in turn, I did a pay adjustment for Mr. Noble. 11 Q And I'm going to ask you to look at the 12 Agency's prehearing submission, Exhibit 2. 13 A (Examining the document.) 14 Q Can you identify that for the record? 15 A Yes. This is the pay adjustment that I did 16 for Mr. Noble -- 17 Q Okay. 18 A -- to have him paid to reflect the 3971 that 19 he sent me that was signed and approved as far as the 20 New Years holiday. 21 Q All right. Now, did there come a time when 22 you brought the Appellant in when you were considering	44	1 THE COURT: Okay. Very good. Please 2 continue. 3 BY MR. FURGESON: 4 Q And I'd ask you to turn your attention to Tab 5 4E. 6 A (Examining the document.) 7 Q Do you see that document? 8 A Yes. 9 Q What is that document? 10 A This is the PDI form that I used. 11 Q And did you complete that predisciplinary 12 investigation? 13 A No, I didn't complete it. 14 Q What happened? 15 A Mr. Noble left. 16 Q And, in fact, on the top of page 2, do you 17 see that handwriting there? 18 A Yes. 19 Q And is that your handwriting? 20 A Yes, it is. 21 Q Can you tell us when he left, did he say 22 anything?
43	1 to take discipline? 2 A Yes. 3 Q I'm going to ask you to look at, in front of 4 you, Tab 4F. 5 A (Examining the document.) Okay. 6 Q And do you have that document? 7 A Yes, I do. 8 Q And what is that document? 9 A This is the notice of a PDI, which is a 10 predisciplinary interview that I sent to Mr. Noble. 11 Q And did he respond to that? 12 A Yes, he came in. 13 Q And did you conduct a PDI? 14 A Yes, I did. 15 THE COURT: Okay. One second, please. 16 Did you say that was Tab 4F? 17 MR. FURGESON: Yes, sir. 18 THE COURT: My Tab 4F -- okay. One of my 19 copies -- you sent two copies, one of my Tab 4Fs is a 20 repeat of the February 8th letter. But I do have -- 21 this is the letter dated February 16th? 22 MR. FURGESON: Yes, sir.	45	1 A Mr. Noble stated that, "I'll come back to 2 work when you pay me." 3 Q Okay. And what was your response? 4 A I said -- I asked him, was he leaving? He 5 said, "Yes." I told him that he'll be marked as AWOL 6 until he returned to work or provided us some 7 documentation stating that he should be out. 8 Q Now, did the Appellant ever return to work 9 after this meeting? 10 A No, he hadn't. 11 Q And you were there -- you were working until 12 April 15th? 13 A April 15th, 2011. 14 Q Did he attempt to call you or contact you in 15 any way? 16 A No, sir. 17 Q What was his pay and leave status after your 18 PDI meeting? 19 A He was AWOL. 20 Q And did you have occasion to mark him as AWOL 21 or put it in the time and attendance system? 22 A Yes.

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46	1 Q I'd ask you to look at Tab 4C. 2 A (Examining the document.) 3 Q Do you recognize this document? 4 A Yes, I do. 5 Q And who does it pertain to? 6 A Mr. Noble. 7 Q And do you know what year it pertains to? 8 A 2011. 9 Q And is there any indication there, any 10 indication of what dates are involved? 11 A Yes. February 19th through the 24th of 12 February. 13 Q And it continues on; is that correct? 14 A Yes, it does. 15 Q And is there any indication there of what his 16 leave or pay status was at that time? 17 A He was paid on the 23rd during the PDI. 18 Before and after, he was AWOL. 19 Q Okay. And how is that indicated there? 20 A It's Code 24, which is the code for AWOL. 21 Q And, specifically, under process clock rings, 22 where is that identified?	48	1 Is there a way to identify that you input it? 2 A Yes. 3 Q The EIN number? 4 A Yes. 5 Q Okay. What's your EIN number? 6 A 01031619. 7 Q Okay. And looking at this document, where 8 would that be? 9 A It's on Wednesday, February 23rd. It's the 10 third column from the right. 11 Q The third column from the right? 12 A Yes. 13 Q And that's your number there? 14 A Yes, it is. 15 Q And is it -- well, let me ask you, if your 16 EIN is in there, is it safe to say that you were the 17 inputting of that document -- 18 A Yes. 19 Q -- that leave or AWOL? 20 A Yes, it is. 21 Q Do you know what Mr. -- if you're in AWOL 22 status, what your pay stubs show?
47	1 A It's the second set of numbers under base. 2 It's the number under base where it says 02400. 3 Q Okay. Is that a code for something? 4 A Yes. That's the code for AWOL. 5 Q And did you at any time input AWOL for him? 6 A Yes, I did. 7 Q And why did you do that? 8 A I put AWOL in because I was the one that 9 scheduled the PDI. 10 Q And is there any way to identify when and if 11 you put in an AWOL for him? 12 A Yes. 13 Q And how do you do that? 14 A My EIN number is placed to the right of any 15 inputs that we put into the system. 16 Q And where would that be in this -- for the 17 record, where would that be in this document? 18 A It's Wednesday, February 23rd. 19 Q Well, I mean, as far as the columns are 20 concerned, where -- 21 A Uh -- 22 Q Well, let me ask you this. Let me back up.	49	1 A It shows leave without pay. There isn't 2 really a column that says AWOL. 3 Q Okay. So if he was on AWOL, it would not 4 show him AWOL on his pay stubs? 5 A No, it wouldn't. And in the TASS system, 6 what is this? Is this used -- is this an official 7 system or is it used for pay and leave purposes? 8 A Yes, it is. 9 Q Is this how people get paid? 10 A Yes, it is. 11 Q It's how they deduct their leave? 12 A Yes, sir. 13 Q Okay. I'll ask you to look at Agency 14 Prehearing Submission No. 1. 15 A [Examining the document.] 16 Q Do you recognize that document? 17 A Yes. 18 Q And what is that document? 19 A This is the note that Mr. Noble sent in 20 with the packet stating why he was out to reflect what 21 was on his signed 3971. 22 Q And what does this document indicate as far

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50	<p>1 as his ability to work after that date? 2 A Well, he should have been able to come back 3 to work on the 13th of January, according to this 4 documentation. 5 Q Have you received any other documentation 6 since then -- 7 A No, sir. 8 Q -- from Mr. Noble? 9 A No, sir. 10 MR. FURGESON: That's all I have. I'll pass 11 the witness. 12 MR. NOBLE: First, does he still have the Tab 13 4G in front of him? 14 MR. FURGESON: Yes. 15 CROSS EXAMINATION 16 BY MR. NOBLE: 17 Q There's three pages in that exhibit? 18 A In 4G? 19 Q Yes. 20 MR. FURGESON: Your Honor, I just noticed 21 there wasn't. I do have one. It must have got 22 miscopied. Here's Tab 4G, the full three pages.</p>	52	<p>1 Exhibit E, Mr. Furgeson, and verify that that is, in 2 fact, what should be Agency's Tab 4G, please? 3 MR. FURGESON: (Examining the document.) Yes, 4 that's -- well, no, there is difference in the 5 signature, but as far as the -- as far as the 6 statements in there are the same, but it is signed 7 differently in his as opposed to mine, but it looks 8 like the wording is exactly the same -- 9 THE COURT: Mr. Furgeson, please give me a 10 copy of your Tab 4G. We will amend it with Tab 4G. 11 You can compare if you want, Mr. Noble, with your Tab 12 4E. Apparently, I don't know what the difference is 13 because I don't have it before me. We will go off the 14 record for one second while I make a copy of this. Mr. 15 Noble, I'll give you a copy of amended Tab 4G. 16 MR. FURGESON: Your Honor, I'm going to make 17 an attempt to find out the holiday pay. 18 THE COURT: Okay. I'll be back here in -- 19 MR. FURGESON: I'll have somebody do it for 20 me. 21 THE COURT: I think that's a good idea. 22 {Short recess.}</p>
51	<p>1 MR. NOBLE: Because both of the copies that 2 I've accessed on the line have been missing pages. The 3 first one was missing the second page. The second time 4 you filed it, it was missing pages 2 and 3. I have an 5 exhibit with all three pages in it. 6 MR. FURGESON: You're certainly welcome to 7 use that. I gave him one that includes all three 8 pages. 9 THE COURT: I only have two pages in mine. 10 MR. FURGESON: Okay. 11 MR. NOBLE: I'd like the record to -- 12 THE COURT: One of my copies only has one 13 page in it, Tab 4G, and one of my copies only has two 14 pages in it. 15 MR. FURGESON: Well, I have all three pages 16 here now, Your Honor. 17 THE COURT: Okay. Let's amend Tab 4G. 18 Mr. Noble, do you have all three pages of Tab 19 4G? 20 MR. NOBLE: Yes, Your Honor. And it is my 21 Exhibit E. 22 THE COURT: Okay. Take a look at Appellant's</p>	53	<p>1 THE COURT: We can go back on the record. 2 Mr. Furgeson, this is a copy of your 3 original. 4 Mr. Noble, I made a copy for both you and me. 5 This is an amended copy of Tab 4G. 6 MR. NOBLE: Thank your, Your Honor. 7 THE COURT: This is amended Tab 4G. Okay. 8 Go ahead, Mr. Noble. 9 BY MR. NOBLE: 10 Q In Amended Tab 4G, do you have all three 11 pages in front of you now? 12 A No. 13 Q Did you have all three pages in front of you 14 when I sent you the letter? 15 A Yes, I had all the pages when you sent it to 16 me. 17 Q All right. How long have you been a Postal 18 Employee? 19 A Seventeen years. 20 Q And you and have known each other for that 21 whole time, haven't we? 22 A Yes.</p>

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<p style="text-align: right;">54</p> <p>1 Q You started out as a letter carrier in Zone 2 16, right? 3 A Right. 4 Q And I used to come and watch you play 5 football? 6 A Yes. 7 Q Toward the bottom of the second paragraph -- 8 A Page 1? 9 Q -- of page 1, yes. I wrote to you -- since 10 says, January 13th, I've been constructively suspended 11 from employment. It says the Zone 16 management team 12 and others have made my working conditions completely 13 intolerable. Did you understand -- what did you 14 understand by my use of the phrase, "constructively 15 suspended?" 16 A Well, that you've been put out for one 17 reason or another and you felt like it wasn't 18 warranted. That's what I understood. 19 Q What did you understand when I said that my 20 working conditions were completely intolerable? 21 A I didn't understand what you meant by that 22 since you hadn't been there.</p>	<p style="text-align: right;">56</p> <p>1 contention that Route 1611 is out of adjustment? 2 A No, I don't agree with that. 3 Q What do you understand that a route should be 4 adjusted to? 5 A It should be adjusted to eight hours. 6 Q And that's at the pace of the regular carrier 7 on the route; is that correct? 8 A That's correct. 9 Q Do you know a carrier named Terrence 10 Seawright? 11 A Yes, I do. 12 Q And Seawright is a carrier who works on my 13 Route 1611 on my off days; isn't that right? 14 A Yes. He's your T6. 15 Q And Seawright can't complete Route 1611 in 16 eight hours, can he? 17 A He has. 18 Q On what occasions? 19 A The day that I walked his route, with him 20 with 21 Mr. Branson along with me. Can I answer your 22 question:</p>
<p style="text-align: right;">55</p> <p>1 MR. FURGESON: Your Honor, I'm just going to, 2 I guess, raise an objection and ask for clarification. 3 This is not a constructive suspension matter. That is 4 going to be a separate issue. I'm not sure -- I guess 5 I'm trying to understand the relevance of why we're 6 going into this. 7 THE COURT: Objection overruled, I'm still 8 waiting to find that out. I really don't know yet. 9 You may continue, Mr. Noble. 10 BY MR. NOBLE: 11 Q Did you understand the various things that I 12 listed in lettered paragraphs A through E to reflect 13 what I thought was some of the things management had 14 done to make my working conditions intolerable? 15 A I understood. 16 Q Did you understand that? 17 A I understood (A), that's why I did the 18 adjustment. As far as (B) through (E), those were 19 things that happened prior to me being there, and I 20 didn't go into them. 21 Q Okay. Well, one of them was that my Route 22 1611 was out of adjustment. Do you agree with my</p>	<p style="text-align: right;">57</p> <p>1 one time. 2 Q I'm sorry? 3 A One time. 4 Q One time? 5 A Yes. 6 THE COURT: Can you please spell the first 7 and last name of that individual that you've just 8 identified? 9 THE WITNESS: Terrence, T-E-R-R-E-N-C-E. 10 Last name Seawright, S-E-A-W-R-I-G-H-T. 11 THE COURT: Thank you. 12 BY MR. NOBLE: 13 Q Do I understand correctly from the responses 14 the Postal Service sent me yesterday that you were the 15 official who made the decision that I should be 16 removed? 17 A No, I'm not. 18 Q Do you know who that official is? 19 A No, I don't. 20 Q How -- how -- how did it happen that you 21 conducted a predisciplinary discussion with me on 22 February 23rd?</p>

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58	<p>1 A I conducted the PDI. The only other target 2 supervisors, Mr. Colter and Mr. French, were busy doing 3 other things, so I conducted the PDI myself. 4 Q How did it -- did it just pop into your mind 5 why not a PDI do with Noble? Did somebody else talk 6 with you about doing a PDI with Noble? 7 A It didn't pop into my mind. They busy and 8 your PDI was already scheduled, so I did it. 9 Q Do you know how -- how it happened the PDI 10 was scheduled? 11 A I scheduled it. 12 Q Why did you schedule it? 13 A Because I was actually doing the attendance 14 for the whole zone. When I first got there, I pulled 15 up everybody's attendance record, so I was addressing 16 the attendance because it was a problem that needed to 17 be fixed. 18 Q After you conducted the PDI, did you 19 communicate to anyone the fact that you had conducted 20 the PDI? 21 A Yes. 22 Q And who was that person?</p>	60	<p>1 Q And I'm not a union representative now, am I? 2 A No, not to my knowledge. 3 Q So the fact that you put something into the 4 TASS system, wouldn't in any way notify me that you 5 considered me to be AWOL; isn't that correct? 6 A Not into the system, no. 7 Q I understood that to be a yes answer to my 8 question, that I would not -- it would not be 9 notification to me; is that correct? 10 A It would not be putting it into the system. 11 Q Thank you. Do you remember about how about 12 how long the predisciplinary interview took on February 13 23rd? 14 A Approximately 10 minutes. 15 Q And do you remember what the first thing that 16 was said was? 17 A No, I don't remember the first thing that 18 was said. 19 Q Did you remember anything about what was said 20 other than what you've already testified to? 21 A You asked me something along the lines of 22 when were they going to do a route inspection on your</p>
59	<p>1 A Mr. Colter. I turned the PDI over to Mr. 2 Colter. 3 Q And did you hear back from Mr. Colter about 4 what happened after you turned the PDI over to him? 5 A He put the rest of the package together and 6 submitted it to go around town and requested a proposed 7 removal part. 8 Q What was the -- what was the rest of the 9 package? 10 A I forgot what they called it. It's a DARs 11 package. It has all the documentation with it. With 12 the PDI and the TASS records, things like that. It has 13 what you propose on the packet. And then it goes down 14 to Labor to get the verbiage put together. 15 Q On the TASS records, those aren't something 16 that I have access to, are they? 17 A You can get them by submitting, you know, 18 the document request form, but you can't go on the 19 system yourself and print them up, no. 20 Q Okay. And by I can get them, you mean a 21 union representative could get them? 22 A Yes.</p>	61	<p>1 route since they implemented the FSS. I told you, I 2 didn't know. 3 You asked me did I know that your route was 4 13-14 hours, something like that. And I told you, to 5 my knowledge, it wasn't. And I asked you a few 6 questions that were on the PDI, and then you were 7 standing up. And I asked you were you leaving? You 8 said, "Yes, I am. I'll be back when you pay me." And I 9 said, well, I've given you a copy of the 2240 showing 10 you that I paid you for the time that you showed me on 11 your 3971, which is a leave slip. I gave you that 12 copy. You grabbed it and folded it up, and you said, 13 "Well, I'll be back when you pay me." And I said, 14 well, if you're leaving, you'll be AWOL until you come 15 back to work and provide me with some documentation. 16 And I asked Mr. Randy Williams, who was your 17 shop steward, that was representing you at the time, 18 did he understand what I said? And he said, "Yes." 19 And you walked out of my office. 20 Q Do you know what a JCAM is? 21 A Yes, I do. 22 Q Can you describe it, please?</p>

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62	<p>1 A It's a joint -- a joint contract between 2 management and the union. 3 Q Is it a book? 4 A It's a book, yes. 5 Q And about what size is it? 6 A It's about this thick (indicating). It's 7 about probably 4 or 5 inches thick. 8 Q And what does it contain? 9 A Bylaws. 10 Q Does it explain to the union and to Postal 11 management how they're supposed to jointly interpret 12 the collective bargaining agreement? 13 A Yes. 14 Q And is it supposed to be used when parties 15 are discussing contract issues? 16 A No. 17 Q Is it supposed to be used during grievance 18 meetings? 19 A I'm not sure. To be honest with you, I'm 20 not sure if it should be used during grievance 21 meetings. 22 Q The Postal Service and the union have</p>	64	<p>1 I told -- yes, I told Mr. Washington that I conducted a 2 PDI, who was my area manager at the time. 3 Q What is an area manager? 4 A An area manager is a grade above the 5 station manager. He has several stations under his 6 command. 7 Q Do you know how many stations Paris 8 Washington has under his command? 9 A No. Not at this time, no, I don't. I don't 10 know how many he had then either. 11 Q Do you know why predisiplinary discussions 12 are conducted? 13 A Yes, I do. 14 Q And why is that? 15 A It's used for investigation to find out what 16 the nature of the issue is. To find out if the 17 supervisor is going to proceed with disciplinary action 18 or not. 19 Q Did either Sterling Colter or Bill French 20 tell you that beginning August 2010, I started making 21 digital recordings of all of my conversations in Zone 22 16?</p>
63	<p>1 provided a copy of the JCAM to every station, haven't 2 they? 3 A That's correct. 4 Q You stated that you don't know who made the 5 decision to remove me; is that correct? 6 A That's correct. Your removal came after I 7 left. 8 Q You left the employment of the Postal 9 Service? 10 A When I left the Friendship Station. 11 Q Okay. 12 A On the 15th of April. 13 Q Are you familiar with the phrase, 14 "progressive discipline?" 15 A Yes, I am. 16 Q Do you know what the JCAM says about 17 progressive discipline? 18 A Not verbatim, no. 19 Q Did you discuss with anyone other than 20 Sterling Colter the fact that you had had a 21 predisiplinary discussion with me? 22 A I think Mr. French was in the room, as well.</p>	65	<p>1 A No, they didn't. 2 Q And you've testified twice that you told me 3 that -- as I was leaving the room that I would be AWOL? 4 A Yes. 5 Q If I told you that I made a recording of the 6 predisiplinary interview, would that make you want to 7 reconsider that testimony? 8 A No. 9 Q Do you remember me telling Tanya during the 10 predisiplinary conference that I haven't been regular 11 in attendance for the last nine years? 12 A Yes, I do remember that. 13 Q Do you remember me telling you that in 2003, 14 I didn't work a single day? 15 A Yes, I do remember that. 16 Q Do you remember that in 2009, I told you I 17 worked seven days? 18 A Vaguely, yes, I do remember that. 19 Q Do you remember me telling you that I think 20 that there's a rule about being regular in attendance, 21 regular in attendance to the same extent that what 22 letter carrier routes, that there is a rule that letter</p>

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66	<p>1 carrier routes were supposed to be adjusted to eight 2 hours? 3 A I don't know about that. 4 Q And do you remember me saying and there is a 5 rule about regular attendance to the same extent that 6 letter carriers who aren't on the old (inaudible) are 7 supposed to be the last people who are forced to work 8 overtime? 9 A I remember that. 10 Q And do you remember me saying and there's 11 rule about attendance to the same extent that when 12 letter carriers has applied for annual and sick leave, 13 they're supposed to get paid for them? 14 A I don't remember that. 15 Q Do you understand that you're under oath? 16 A Yes, I do. 17 Q In early February 2011, did a union steward 18 named Randy Williams approach you to discuss my annual 19 and sick leave? 20 A No. 21 Q Do you remember a letter you signed on March 22 3rd directing me to --</p>	68	<p>1 Exhibit VV. 2 THE COURT: Okay. Does that satisfy you that 3 the Agency is going to stipulate that it was not sent 4 on March 3rd. 5 Well, I certainly agree that it was not sent. 6 THE WITNESS: And if you look at the letter, 7 that's dated March 3rd, it should reflect the letter 8 that was sent in January, the confirmation notice, it 9 should be the same. 10 BY MR. NOBLE: 11 Q You -- as to the letter that I sent you in 12 early February telling you that I was constructively 13 suspended, other than the annual leave issue, you 14 didn't address any of the issues that I raised in that 15 letter, did you? 16 A No, I didn't, just the one saying that you 17 weren't paid for the approved 64 hours of combined sick 18 and annual leave. That's the only issue that I 19 addressed. 20 MR. NOBLE: Okay. I have no further 21 questions. 22 THE COURT: Redirect?</p>
67	<p>1 THE COURT: 2011? 2 MR. NOBLE: Yes, 2011. 3 BY MR. NOBLE: 4 Q Directing me to provide medical certification 5 and telling me that I was AWOL? 6 A No, I didn't say anything March 3rd. 7 Q Do you remember signing such a letter? 8 A No, I didn't sign a letter for March 3rd. 9 Can I explain that letter? 10 Q Yes. 11 A The program that's on the computer when you 12 open it up, it automatically goes to the date that you 13 open up the program, which was printed out. That's why 14 that date said March 3rd. That had prior -- that had 15 been sent to you prior. 16 MR. FURGESON: Your Honor, if I can interject 17 here. I think I have withdrawn that. It was not an 18 exhibit. March 3rd was an error included in the file. 19 I thought it had been sent and I found out later, it 20 had not been sent because it was in a file of material, 21 and so we'll stipulate that it was not sent. 22 MR. NOBLE: I've included it, Your Honor, as</p>	69	<p>1 MR. FURGESON: Just a couple, Your Honor. 2 REDIRECT EXAMINATION 3 BY MR. FURGESON: 4 Q When you were -- Mr. Noble asked you if you 5 would have a different response if you knew your 6 conversation with him, you were recorded on the day of 7 the PDI. Were you aware that he was recording the 8 conversation? 9 A No, I wasn't. 10 Q Did he tell you he was recording it? 11 A No, he didn't. 12 Q Did you know that he customarily recorded 13 conversations? 14 A No, I didn't. 15 Q And when you told him he was AWOL, did he 16 make a response back to that? 17 A No, he didn't. 18 Q And how long was that PDI? 19 A Approximately 10 minutes. 20 Q And it was not completed? 21 A No, it wasn't. 22 MR. FURGESON: That's all I have, Your Honor.</p>

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70	<p>1 THE COURT: Mr. Noble? 2 MR. NOBLE: Before we do the next witness, 3 I'd like to -- I'd like to address the Judge, if I 4 could. 5 THE COURT: Does it pertain to this witness 6 or no? 7 MR. NOBLE: It does, yes, Your Honor. 8 THE COURT: Do you want this witness in the 9 room while you're discussing this or no? 10 MR. NOBLE: It doesn't matter. 11 THE COURT: What are you doing procedurally? 12 I need clarification, I'm sorry. Are you filing a 13 motion? 14 MR. NOBLE: Yeah. I'm going to make a brief 15 motion. 16 THE COURT: Okay. What's the motion? 17 Mr. Jones, you need to step out for one 18 second and then if we need you, we'll call you right 19 back. Don't talk about your testimony when you go out. 20 Just go in a way that you can't hear what we're saying, 21 and then we'll come back and get you. Okay? 22 (The witness exited the hearing room.)</p>	72	<p>1 to that. That's fine by me. 2 But, no, you are not allowed to submit -- 3 MR. NOBLE: During my testimony will I be 4 permitted to submit as an exhibit the transcript of the 5 PDI? 6 THE COURT: Do you have it with you? 7 MR. NOBLE: Yes. 8 MR. FURGESON: I would object. You know, he 9 had time to do that. I don't know if -- Mr. Jones was 10 not -- he said he wasn't aware of it. He testified 11 truthfully. We don't know if he recorded the whole 12 transcript, he had the whole recording, if it was an 13 audio. We don't know if it was properly recorded or 14 not or if he just recorded part of it. We have no way 15 of knowing. 16 THE COURT: Okay. So this is a notarized 17 version of -- someone has notarized it that this is a 18 true and accurate -- 19 MR. NOBLE: No, but I will swear under oath 20 that it is a true and accurate transcript. 21 THE COURT: So you say you object? 22 MR. FURGESON: I object to it.</p>
71	<p>1 MR. NOBLE: Now, my motion is, Your Honor, 2 that -- 3 THE COURT: One second, sir, the door is 4 still open. 5 Please continue? 6 MR. NOBLE: My motion is, Your Honor, that 7 the record be kept open long enough so that I can 8 submit as an exhibit a recording of the PDI with Tony 9 Jones. It will show that Mr. Jones did not tell me 10 that I would be AWOL if I left or after leaving. 11 THE COURT: Okay. And you sought his 12 permission before you tape recorded -- 13 MR. NOBLE: I did not, your Honor. And I am 14 not required under D.C. statutes to do so. 15 THE COURT: But I'm just asking -- 16 MR. NOBLE: No, I did not. I did not. 17 THE COURT: -- did you ask him -- did you 18 seek permission or did you tell him? 19 MR. NOBLE: No, I did not. 20 THE COURT: Your request to submit this tape 21 recording is denied. You are -- you have been approved 22 as a witness and I will let you testify under oath as</p>	73	<p>1 THE COURT: The objection is sustained. It 2 is not going to be admitted. You may testify about it. 3 You might testify as to your knowledge about what was 4 said. 5 Fo you have any further questions of Mr. 6 Jones? 7 MR. NOBLE: No. 8 THE COURT: Mr. Furgeson? 9 MR. FURGESON: No, sir. 10 THE COURT: Okay. Would you kindly let Mr. 11 Jones know-bring Mr. Jones back in for one second and 12 then we'll have Mr. Colter. 13 (The witness re-enters the hearing 14 room.) 15 THE COURT: And then we'll have Mr. Colter. 16 Yes, you can just stay there. Mr. Jones, I 17 want to thank you for your testimony today, and I am 18 going to ask you do not discuss your testimony with 19 anyone until after the close of this hearing. Is that 20 understood? 21 THE WITNESS: Yes, sir. 22 THE COURT: You are excused from these</p>

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74	<p>1 proceedings. Thank you very much, sir. Okay. Have a 2 good day. 3 (The witness was excused.) 4 THE COURT: Okay. Mr. Colter, please. 5 MR. FURGESON: Your Honor, before we bring 6 him, can I make an -- with regards to the stipulations 7 this morning? 8 THE COURT: Yes, sir. 9 MR. FURGESON: Your Honor, this is what the 10 Agency is willing to stipulate to as far as the 11 holidays. Do you want to hear it? 12 THE COURT: Sure. Go ahead. 13 MR. FURGESON: He was not paid for Columbus 14 Day 2010; he was not paid for Thanksgiving 2010; he was 15 not paid for Christmas 2010; he was marked originally 16 as AWOL for New Years holiday, but according to Mr. 17 Jones, part of the readjustment was to pay him for the 18 New Years holiday. That's all the information. He was 19 paid for the New Years holiday. 20 So we're willing to stipulate, certainly, as 21 the first one, Columbus Day, Thanksgiving and Christmas 22 of 2010, he was not paid.</p>	76	<p>1 And we asked Mr. Jones to send up Mr. French? 2 MR. FURGESON: Yes, Mr. French is out there. 3 THE COURT: Great. 4 Good Morning, Mr. Colter. 5 MR. COLTER: Good morning, sir, how are you? 6 THE COURT: Okay. My name is Judge Turbitt. 7 Before we proceed with your testimony, I need to ask 8 you if you have any objections to taking an oath. 9 MR. COLTER: No. 10 THE COURT: Okay. Please raise your right 11 hand and repeat after me. I, state your name, sir? 12 MR. COLTER: I Sterling Colter -- 13 THE COURT: Do solemnly swear -- 14 MR. COLTER: -- do solemnly swear -- 15 THE COURT: -- to tell the truth -- 16 MR. COLTER: -- to tell the truth -- 17 THE COURT: -- the whole truth -- 18 MR. COLTER: -- the whole truth -- 19 THE COURT: -- and nothing but the truth -- 20 MR. COLTER: -- and nothing but the truth -- 21 THE COURT: -- so help me God. 22 MR. COLTER: --- so help me God.</p>
75	<p>1 THE COURT: Okay. With that, Mr. Noble, are 2 you willing to stipulate to the first three holidays 3 that you were not paid for those three holidays? 4 MR. NOBLE: Yes. 5 THE COURT: Okay. That was the -- also in 6 response to the interrogatory, you had asked about 7 that. Now, as to the New Years Eve -- 8 MR. FURGESON: New Years Day. 9 THE COURT: I'm sorry, New Years Day, the 10 Agency is saying that you were originally logged as 11 AWOL for that day, but later paid. Do you dispute 12 that? 13 MR. NOBLE: Yes. 14 THE COURT: Okay. We've got a stipulation as 15 to the first three holidays and I doubt that we're 16 going to be able to get a stipulation since you both 17 disagree on New Years Day. So we have a stipulation of 18 the first three. 19 So, again, your motion for that is granted, 20 Mr. Noble, now that I have a joint stipulation from 21 both sides. Okay. 22 Can you please have Mr. Colter?</p>	77	<p>1 THE COURT: Thank you, sir. Please be 2 seated. 3 Mr. Furgeson, your witness 4 MR. FURGESON: Thank you. 5 WHEREUPON, 6 STERLING COLTER 7 Called as a witness, having been first duly 8 sworn, was examined and testified as follows: 9 DIRECT EXAMINATION 10 BY MR. FURGESON: 11 Q Mr. Colter, what position do you occupy with 12 the Postal Service at the present time? 13 A I am a supervisor in an acting manager role. 14 Q And where are you an acting manager? 15 A Friendship Post Office. 16 Q Okay. And how long have you been in that 17 position? 18 A Approximately -- approximately a little less 19 than a year. 20 Q And when did you start there, if you recall? 21 A Around August of last year. 22 Q And prior to that what was your position?</p>

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<p style="text-align: right;">78</p> <p>1 A Supervisor, customer service in a different 2 office. 3 Q And what office was that? 4 A That was the main office in Washington, D.C. 5 Q That's still your title, I guess? 6 A Yes, sir. 7 Q And how long have you been a customer service 8 supervisor? 9 A Approximately three years. 10 Q And that's with letter carriers -- dealing 11 with letter carriers; is that correct? 12 A Yes, it is. 13 Q Do you know Mr. Noble here, the Appellant? 14 A I do. 15 Q Okay. Do you recall on/or about February 16 24th of this year through April 28th, do you know if 17 the Appellant came to work any of those days? 18 A He was not, that I can recall. 19 Q And do you know of any reason for his absence 20 for those days? 21 A I am not aware of any reason. 22 Q And as a result of his absence, were you</p>	<p style="text-align: right;">80</p> <p>1 Social Security numbers -- as well as their clock 2 rings. It's a reflection of their work date and/or 3 week. 4 Q Is there leave usage and compensation based 5 on this document? 6 A Yes, sir. This is -- it's reflective of 7 what leave status a person is in for. 8 Q And in what year does this cover, this 9 particular -- 10 A In the top left-hand corner, directly under 11 report, you see the abbreviation for year, YRPPWK. 12 That stands for year, pay period and work. So the year 13 of this is 2011. 14 Q Okay. And I may have asked you, it pertains 15 to Mr. Noble; is that correct? 16 A Yes, it does. It's David Noble, Jr. 17 Q Okay. And looking at this document, do you 18 see there where it says process clock rings? 19 A Yes, sir. 20 Q And right under that, could you -- starting 21 from left to right, could you explain what those 22 various columns mean?</p>
<p style="text-align: right;">79</p> <p>1 aware of his leave status during that period? 2 A AWOL, yes, I did. Absence without official 3 leave. 4 Q Now, when a person has AWOL, does that show 5 up on their pay stub as AWOL? 6 A No, sir. It shows up as LWOP, L-W-O-P, 7 leave without pay. If you have -- if you're in an AWOL 8 status, it shows as LWOP meaning you're not paid. It 9 doesn't distinguish what leave you're on. It's just 10 showing that you have leave without pay. 11 Q I'm going to -- maybe you have a copy of it 12 already. If you look at Tab 4C under the Agency's 13 file, would you look at that diagram, please? 14 A (Examining the document.) 15 Q Do you recognize that document? 16 A Yes, sir. 17 Q What is that document? 18 A That is an employee all report. 19 Q And what is it used for? 20 A This is for -- it basically displays an 21 employee name and their EIN number. That is just a 22 number that is associated with them -- you don't use</p>	<p style="text-align: right;">81</p> <p>1 A Okay. Basically, you have the day of the 2 week. It identifies which day in question -- 3 Q That would be Saturday at the very top? 4 A Right. That would be Saturday at the top. 5 And then you'll see base, which basically shows the 6 operation. 024 stands for AWOL, and it shows -- you 7 see the eight hours, that stands for a period of eight 8 hours. This was what he was input into the system as 9 024 as AWOL. 10 As you go across the page, 722 is an 11 operation within the office. That means that carriers 12 were working in the office. 016, 011 identifies the 13 carrier route. 8:00 a.m. begins the time or the ring. 14 0369-0470 identifies a member of management's EIN that 15 did something to this clock ring. Anytime a manager or 16 a supervisor inputs something, it's identified by their 17 EIN. And beside that, you see the date. 18 Q Okay. And over on the left side, there about 19 the third column over, 2/19 -- 02/19, do you see that? 20 A Yes, sir. 21 Q What does that mean? 22 A That's the date, February 19th.</p>

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82	1 Q Of 2011? 2 A 2011, yes, sir. 3 Q And as you go through this, does this go 4 through till -- till what period of time, this 5 document? There's several pages here. 6 A It goes all the way through April 29th, 7 2011. 8 Q Okay. And do you have an EIN number? 9 A Yes, I do. 10 Q And what is that? 11 A 0 -- 12 THE COURT: I'm sorry; did you say the 29th 13 or the 26th? 14 THE WITNESS: The 29th. 15 THE COURT: Do me a favor, the upper right- 16 hand side, sir, do you see where it says page? 17 THE WITNESS: Yes, sir. 18 THE COURT: Where does our page end? 19 THE WITNESS: Page 9. 20 THE COURT: Do you have a page 10? 21 THE WITNESS: I do. I'm sorry; page 10 is 22 where it ends. I'm sorry.	84	1 A Yes, sir. 2 Q And that is because he did not show up for 3 work? 4 A Correct. 5 Q And he didn't notify you? 6 A Right. Without notification or submitting a 7 971 which is a leave slip, he would be put in the 8 system as AWOL. 9 Q Now, I'm going to ask you to look at, if you 10 would, the exhibit in front of you, at Tab 4B, which is 11 just preceding that, what you've just gone through. 12 A (Examining the document.) 13 Q And what is this document? 14 A This is a notice of removal issued to Mr. 15 Noble for being AWOL. 16 Q Have you seen this document before today? 17 A Yes, I have. 18 Q And have you previously read this document? 19 A Yes, sir, I have. 20 Q Do you see -- is your name -- is that your 21 name on the document as the concurring official? 22 A It is.
83	1 THE COURT: Okay. And looking at the bottom 2 of that date for Friday -- oh, I see, it's below the 3 base. That's the 29 that we're talking about? 4 THE WITNESS: Yes, sir, 4/29. 5 THE COURT: All right. Thank you. 6 BY MR. FURGESON: 7 Q And you indicated the code there, 24, is 8 AWOL? 9 A Right. 10 Q So any time you see 24 there, that means it's 11 AWOL? 12 A Yes, sir. 13 Q Okay. And I'm sorry, did you give me your -- 14 you gave me your -- did you give me your EIN number? 15 A No. 03696945. 16 Q Okay. And did you enter any AWOL for Mr. 17 Noble? 18 A Yes, sir. 19 Q When was the first time? 20 A Forst time 2/28 -- February 28th, 2011. 21 Q And any time that number is there, you were 22 involved in Mr. Noble?	85	1 Q And explain what that means? 2 A At the point that discipline is issued, it 3 has to be conferred by a higher official, and that 4 official to me. Mr. French is the supervisor. I was 5 acting manager, so I had to concur the action by saying 6 I agree with it, and signed off on it. 7 Q And is there any prior discipline mentioned 8 in that notice? 9 A No, sir. 10 Q Okay. And did you consider this appropriate 11 to remove Mr. Noble without prior discipline being 12 cited? 13 A Yes, sir. 14 Q And why is that? 15 A AWOL is considered to be an egregious 16 offense. 17 THE COURT: One second, I'm sorry. 18 Will the parties stipulate that Mr. Noble had 19 no prior disciplinary record? 20 MR. NOBLE: Yes. 21 MR. FURGESON: He had no cited -- there's no 22 discipline cited.

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86	<p>1 THE COURT: No cited prior disciplinary 2 record? 3 MR. FURGESON: Yeah. 4 THE COURT: Mr. Noble, are you willing to 5 stipulate to that? 6 MR. NOBLE: Yeah, I'll stipulate that there's 7 no infractions cited. 8 THE COURT: Okay, please continue. 9 BY MR. FURGESON: 10 Q Have you finished your answer? 11 A Well, basically I was saying that AWOL is 12 considered to be an egregious offense. The Postal 13 Service cannot operate if the employees don't show up 14 for work and give us any notification if they're not 15 coming to work, so it's considered a removable offense. 16 Q Do you know if the Appellant was given a 17 predisiplinary investigation prior to this removal? 18 A Yes. 19 Q And do you know when that happened? 20 A I'm not sure exactly what the date was 21 because I didn't conduct the PDI, but we stipulated in 22 the notice. But I'm not sure off the top of my head</p>	88	<p>1 Q Did you try to influence Mr. Washington's 2 decision on the removal of Mr. Noble? 3 A No, sir. 4 Q So other than what you testified to, is that 5 the sum and substance of your conversation with Mr. 6 Washington? 7 A Correct. 8 MR. FURGESON: That's all I have, Your Honor. 9 THE COURT: Mr. Noble? 10 And you said Mr. Washington was your 11 supervisor, correct? 12 THE WITNESS: Correct. 13 THE COURT: Okay. 14 CROSS EXAMINATION 15 BY MR. NOBLE: 16 Q You had testified about what was put into the 17 system regarding me being AWOL, correct? 18 A I'm sorry, can you repeat the question? I 19 testified to what was -- I was actually testifying to 20 what was -- to what I was reading from, the all report. 21 Q Do I understand your testimony to be that you 22 entered AWOL designations into the TASS system for</p>
87	<p>1 what date the PDI was. 2 Q Were you aware that he had not completed the 3 PDI, Mr. Noble? 4 A Say again, I'm sorry. 5 Q Were you aware that he had not completed the 6 predisiplinary investigation? 7 A No, sir. 8 Q He had not completed it or you were not aware 9 of it? 10 A I wasn't aware that he did not. 11 Q But you were aware that he was AWOL? 12 A Correct. 13 Q Do you recall discussing this removal with 14 other managers or supervisors? 15 A Just Mr. Washington. 16 Q And what did you discuss with him? 17 A Well, Mr. Washington was my manager and 18 basically -- he basically stated to me that we need to 19 act on Mr. Noble's attendance because he wasn't -- he 20 wasn't at work, and didn't appear to be coming back to 21 work. We hadn't been notified of anything, so we 22 needed to move forward with the action.</p>	89	<p>1 certain dates when I was absent from work? 2 A Yes, sir. 3 Q Okay. Did you communicate to me that you 4 considered me to be AWOL on those dates? 5 A No, sir. 6 Q When did the discussion with Mr. Washington 7 that you testified about occur? 8 A I don't recall. 9 Q Do you understand that -- is it your 10 understanding that it was Mr. Washington who made the 11 decision to remove me? 12 A No, sir. Well, it's basically my 13 understanding that you were not -- you're not in 14 attendance. You were not coming to work. We had not 15 been notified as to why you weren't coming to work or 16 anything. My role as an acting manager is to oversee 17 the day-to-day operations. Again, it caused conflicts 18 with the schedule every day when we have an employee 19 that's -- is not reporting to work, and we don't know 20 why. So, as per operating as, you know, as acting 21 station manager, we have to address attendance issues. 22 And there was a clear attendance issue.</p>

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90	<p>1 Q Okay. I'm trying to find out who it was who 2 made the decision that I should be removed? 3 A I think ultimately you made that decision by 4 not coming to work and not notifying your employer as 5 to why you weren't coming to work or when you would 6 return or anything for that matter. 7 Q So you don't know who in management made the 8 decision to remove me? 9 A Who in management made -- 10 Q Yes. 11 A Again, I think that's more of a decision 12 that was made on your part by not -- not showing up to 13 work. 14 Q Okay. I'm going to ask you to answer this 15 question yes or no. Do you know what management 16 official made the decision to remove me? 17 A Do I know what -- which management official 18 made the decision to remove you? It was a collective 19 thing. It wasn't -- it's not a yes or no answer 20 because it's not a one-man -- it's not like a one- 21 person decision. Ultimately, we're all responsible for 22 ensuring that the operation flows on a day-to-day</p>	92	<p>1 Q Okay. But if it wasn't me who made the 2 decision, if instead it was some manager, who was that 3 manager? 4 A If it wasn't you, but all this is contingent 5 upon -- your employment is based on coming to work. If 6 you don't come to work, no one is making that decision, 7 but you. I can't say that any member of management 8 made that decision. I can't say if you didn't do it, 9 because you're the one that didn't come to work. Had 10 you come to work, then there would have been no notice 11 of removal for attendance. But because you didn't come 12 to work... So, in my opinion, that points directly to 13 you. 14 Q In the summer and fall of 2010, I on some 15 occasions told you that I was recording our 16 conversations, didn't I? 17 A No, sir. 18 Q Would you say that if I had a recording of me 19 telling you that I was recording our conversations? 20 A To my knowledge, I'm not aware that you 21 recorded any of our conversations. I'm not aware of 22 any conversations you and I had ever being recorded</p>
91	<p>1 basis. So as a supervisor, the supervisor realized 2 that you're not working, you're not showing up to work, 3 then, you know, PDIs has come up with -- your 4 attendance record is pulled and then, you know, we 5 follow the process, which we have in place for 6 corrective action. 7 Q Okay. Who do you understand was involved in 8 the collective -- that made the decision to remove me? 9 A Who as far as -- 10 Q Who was involved in the -- you described it 11 as a collective. Who was involved in that collective? 12 A Mr. Jones, I think, conducted the PDI with 13 you, if I'm not mistaken. Mr. Jones conducted the PDI. 14 I'm not exactly sure who -- I'm not sure -- I'm not 15 exactly sure what it is that you're -- I really kind of 16 don't understand the question "Who was involved in it." 17 Who did the PDI? Is that that you're asking me or who 18 -- 19 Q No. I'm asking who made the decision that I 20 should be removed? 21 A Again, I thought I answered. I said, in my 22 opinion, you made that decision.</p>	93	<p>1 because there's a policy in the workplace that nothing 2 can be recorded. You can't bring any recording devices 3 into the Postal -- on to the workroom floor to record 4 anything. So, I'm not aware of you recording anything, 5 any conversation we had or anything for that matter 6 because, again, we have a clear policy stating that you 7 cannot record anything in the Postal facility. 8 THE COURT: Where is that, sir? What policy 9 is that? 10 THE WITNESS: We have a policy. I don't know 11 exactly what the policy number is, but we have a policy 12 where you can't have any recording devices and/or 13 recording within the Postal Service. I can tell you to 14 see exactly what it is, but like within the facility we 15 have that you can't bring any cameras or anything for 16 that matter into -- and record anything. 17 THE COURT: Okay. I want to find out what 18 law, rule, regulation, policy that is. 19 MR. FURGESON: We have one. I'll stipulate 20 to that. We do have one. I'll have to find out what 21 it is. It's in one of our employee manuals. 22 THE COURT: Mr. Noble, will you stipulate to</p>

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94	<p>1 that?</p> <p>2 MR. NOBLE: I will not, Your Honor.</p> <p>3 THE COURT: Okay.</p> <p>4 MR. NOBLE: I have an arbitration decision</p> <p>5 saying that it is lawful to make recordings of one's</p> <p>6 own conversations with other people in the Postal</p> <p>7 Service and the Postal Service may not take</p> <p>8 disciplinary action against an employee for doing so.</p> <p>9 MR. FURGESON: We had several disciplines</p> <p>10 against people who have taken -- and successfully, and</p> <p>11 some of them have become this Board.</p> <p>12 THE COURT: Okay. Well, that is -- I mean, I</p> <p>13 don't have a removal based on elicited recordings of</p> <p>14 conversations. I have a removal based on AWOL. I</p> <p>15 wanted to find out if the Postal Service does have a</p> <p>16 policy that prevents recording devices from being on</p> <p>17 the premises and/or that prevents conversations being</p> <p>18 recorded.</p> <p>19 It doesn't make a difference in terms of the</p> <p>20 charge here, but one of the questions I have before me</p> <p>21 from the Appellant, Mr. Noble, is whether he can</p> <p>22 introduce conversations that were taken at the U.S.</p>	96	<p>1 floor?</p> <p>2 A I don't recall that, no.</p> <p>3 Q Would you change your testimony if I told you</p> <p>4 that I have a recording of me asking you --</p> <p>5 A No, sir.</p> <p>6 Q -- to tell me what the rule was that</p> <p>7 prohibited recording on the workroom floor?</p> <p>8 A My testimony would not change. My</p> <p>9 testimony would stay the same. Again, I do not recall</p> <p>10 a conversation where I was telling you about recording.</p> <p>11 I remember -- I do recall the conversation that you had</p> <p>12 a -- you had something in your hand and said, I'm</p> <p>13 recording, and I said, "No, you can't record any</p> <p>14 conversations that we have. Nothing that I say can be</p> <p>15 recorded. In order to record me, you would need my</p> <p>16 permission to do so, and you don't have my permission</p> <p>17 to record me with anything."</p> <p>18 Q How did the concurrence to which you</p> <p>19 testified from occur?</p> <p>20 A Once the notice of removal has been</p> <p>21 prepared, and the supervisor basically signs off on it,</p> <p>22 he presents it to me to concur it. To read over it and</p>
95	<p>1 Postal Service premises, and I don't -- I just want to</p> <p>2 see if there is a concern about that from -- in terms</p> <p>3 of an exhibit and whether it can be a valid exhibit.</p> <p>4 There would be other reasons why -- I've already denied</p> <p>5 it, but I want to see if that is also a concern.</p> <p>6 So, Mr. Ferguson, I direct you to find that</p> <p>7 law, rule, regulation or policy that prohibits</p> <p>8 employees from using a recording device on Agency</p> <p>9 premises.</p> <p>10 MR. FURGESON: I assume I have some time to</p> <p>11 do that?</p> <p>12 THE COURT: You're going to -- well, we'll</p> <p>13 see if you can do it -- you don't have to do it right</p> <p>14 now, but we'll see if you can do it.</p> <p>15 MR. FURGESON: Do it today?</p> <p>16 THE COURT: We'll see if we can.</p> <p>17 Okay, please continue.</p> <p>18 BY MR. NOBLE:</p> <p>19 Q Do you recall having a conversation with me</p> <p>20 on the workroom floor about a year ago in which you</p> <p>21 told me that there was a Postal rule prohibiting</p> <p>22 recording -- recordings being made on the workroom</p>	97	<p>1 concur it if I'm in agreement with it.</p> <p>2 Q And is that what happened here?</p> <p>3 A I don't recall specifically how it happened,</p> <p>4 but I was the concurring official.</p> <p>5 Q You don't remember whether Mr. French brought</p> <p>6 you the letter for your concurrence?</p> <p>7 A I don't recall, sir.</p> <p>8 Q Did you conduct any independent investigation</p> <p>9 of the removal before concurring?</p> <p>10 A I did. I basically -- I basically check the</p> <p>11 system to see if you were in an AWOL status and the</p> <p>12 system was reflecting that you were.</p> <p>13 Q Have you ever seen a letter I wrote to Tony</p> <p>14 Jones in February 2011 in which I told Mr. Jones that I</p> <p>15 considered myself to be constructively suspended?</p> <p>16 A No, sir. I have no knowledge of it.</p> <p>17 Q Do you remember an incident that occurred on</p> <p>18 July 29th, 2010?</p> <p>19 THE COURT: Yes or no, sir?</p> <p>20 THE WITNESS: What incident?</p> <p>21 THE COURT: You can say yes or no based on</p> <p>22 the question. He can give you some more information</p>

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98	<p>1 later. 2 THE WITNESS: No. No. 3 BY MR. NOBLE: 4 Q Do you remember the first time you and I met? 5 A No. 6 Q Do you remember ever telling me to leave the 7 premises in Friendship Station or to clock out? 8 A No, sir. 9 Q If I told you that a federal judge found that 10 you ordered me out of the premises of Friendship 11 Station on July 29th, 2010, would that change your 12 testimony? 13 A No, because I didn't order you off the 14 premises. 15 Q Do you remember a predisciplinary interview 16 with me conducted by Brandon Toatley on August 12th, 17 2010? 18 A No, sir. 19 Q Do you ever remember being called in to a 20 predisciplinary interview with me to answer a question 21 about whether you had ordered me off the floor on July 22 29th?</p>	100	<p>1 withdraw the objection. 2 THE COURT: Okay. 3 THE WITNESS: Yes, sir. 4 BY MR. NOBLE: 5 Q Is that stated somewhere in the collective 6 bargaining agreement? 7 A Not to my knowledge. I'm not really sure. 8 I said that I feel like it is egregious because 9 attendance is a core "requirement" of your job -- of 10 your job, and the fact that you are not coming to work 11 and you're not notifying anyone as to why, that's why I 12 said it's an egregious offense. 13 Q Have you heard anything about 20 or so 14 carriers in Zone 16 four or five years ago being caught 15 clocking each other in and out when they weren't at 16 work? 17 A I'm not aware. I wasn't at Friendship five 18 years ago. 19 Q So, you don't know whether many of the people 20 that you're presently managing were accused of theft of 21 time, a time card fraud? 22 A No, sir. Again, I don't have a history</p>
99	<p>1 A I'm sorry, could you repeat the question. 2 I'm sorry, could you repeat it? Do I recall being 3 called into a PDI? 4 Q Being called into a PDI to answer a question 5 about whether you had ordered me off the floor on July 6 29th, 2010? 7 A Not that I can recall, sir. 8 Q Do you remember coming out to my route on 9 August 12th with Chester Maddox? 10 A I don't recall that specific incident, but, 11 however, it's a part of our job to do street 12 supervision daily. So we go out and do street 13 supervision on all the areas on carriers every day, but 14 I don't recall the specific incident coming out to your 15 route. 16 Q You testified that you consider AWOL to be an 17 egregious defense, correct? An egregious offense, 18 correct? 19 MR. FURGESON: Objection. 20 THE COURT: One second before you answer. 21 MR. FURGESON: I'll withdraw the objection. 22 He said defense and later changed it to offense. I</p>	101	<p>1 report on the employees. I haven't been at Friendship 2 for five years. Prior to me coming to Friendship, I 3 had never heard of Friendship or the people there. So 4 I'm not sure what transpired before I got there. 5 Q Would you consider time card fraud to be a 6 more egregious offense or a less egregious offense than 7 AWOL? 8 A I would think they're both equally as 9 egregious. Both of them. I mean, all of it is about 10 the same, in my opinion, if it's wrongdoing on the 11 employee's part. 12 Q How about -- how would being AWOL compare 13 with cheating an employee out of holiday pay by a 14 supervisor? 15 MR. FURGESON: Objection. 16 THE COURT: On what basis? 17 MR. FURGESON: I don't think there's a basis 18 because he's not talking about -- he's talking about 19 apples and oranges. He's talking about discipline and 20 he's talking about holiday pay under the contract, and 21 it's not a disciplinary situation. If he's talking 22 about disciplinary situation, I think it would be</p>

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102	<p>1 comparable. But I think it is too far afield and 2 relevant to be a probative question. 3 THE COURT: Objection sustained. 4 BY MR. NOBLE: 5 Q Are you familiar with a carrier named 6 Terrence Seawright? 7 A I do have a carrier named Terrence 8 Seawright. 9 Q And does he work on my bid assignment one day 10 per week? 11 A It is in his set up. Your route is in his 12 set up. He's a T6. And the route is in his set up. 13 Q And can Terrence Seawright carry my route in 14 eight hours? 15 A I'm not sure. 16 Q Do you know how long it took him yesterday? 17 A No, sir. 18 Q Carriers in the Friendship Station start work 19 at 8 o'clock in the morning, correct? 20 A Correct. 21 Q Do you know how many carriers in the 22 Friendship Station were out after 9 o'clock last night?</p>	104	<p>1 Q Under the M39 a route is supposed to be 2 adjusted to eight hours, correct? 3 A Under the M39, what manual is that? 4 Q Under management delivery services, M39. 5 A No, sir, I'm not familiar with what that 6 says that a route is supposed to be adjusted to eight 7 hours. 8 Q Well, is it your understanding that a route 9 is supposed to be adjusted to eight hours? 10 A No, sir. 11 Q How long do you think a route is supposed to 12 be adjusted to? 13 A Well, that depends --I mean, it depends on 14 if you're in FSS environment or that depends on if it's 15 a business route or residential route. Because there 16 are a lot of determinant factors, a lot of things that 17 would -- there's a lot of things that would impact what 18 a route should be. So it could be -- a route could be 19 adjusted to a number of things depending on the 20 circumstances. 21 Q Has it been your experience that I can 22 complete my assignment within eight hours?</p>
103	<p>1 A I do not. 2 Q During the whole time that you've been at 3 Friendship Station, I've brought back mail -- 4 undelivered mail to the station every day, haven't I? 5 A You've brought back mail to the station 6 every day since I've been at Friendship? No, you 7 haven't been at -- you haven't been at Friendship every 8 day since I've been at Friendship. 9 Q Every day that I worked since you've been at 10 Friendship, I've brought back undelivered mail, haven't 11 I? 12 A I can't give a definitive answer to that. 13 Again, as a station manager, a lot of the time I'm not 14 even in the stations. And I'm in meetings and on 15 telecoms. That would be more of a supervisory role as 16 to who brings mail back and, you know, exactly what 17 happens on the street. If they have a dog bite, as an 18 acting manager, I really don't -- I wouldn't be there 19 in the evening when mail would be coming back or that's 20 not something that would be reported to me, so not -- 21 not that I can recall. Not to say that it didn't 22 transpire, but...</p>	105	<p>1 A Again, I don't recall you being at work very 2 much since I've been there, so as far as your 3 capabilities of completing your assignment or not being 4 able to complete your assignment, I'm not sure. I 5 don't know if you -- you know, I don't know -- like I 6 say, I don't recall you being at work a lot to say that 7 you could or could not complete your assignment in a 8 certain time frame. 9 MR. NOBLE: That's all I have. 10 THE COURT: Redirect? 11 MR. FURGESON: Just a couple. 12 REDIRECT EXAMINATION 13 BY MR. FURGESON: 14 Q Looking at Exhibit 4B, that you signed at the 15 concurring official -- 16 A Uh-huh. 17 Q -- and who is the official that initiated 18 that; do you know, which is the notice of proposed 19 removal? Who had signed that at the bottom? 20 A Mr. French. 21 Q And what relationship did he have with Mr. 22 Noble?</p>

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<p style="text-align: right;">106</p> <p>1 A He is his direct supervisor.</p> <p>2 Q And that is what you concurred in?</p> <p>3 A Right.</p> <p>4 Q And did Mr. French have the authority to</p> <p>5 issue that kind of a removal notice?</p> <p>6 A Yes, he does.</p> <p>7 Q Do you know who -- now, this is the proposed</p> <p>8 removal notice; is that correct?</p> <p>9 A Uh-huh.</p> <p>10 Q And do you know who made the decision to</p> <p>11 uphold that removal?</p> <p>12 A To uphold it?</p> <p>13 Q Yeah. You issued the decision letter?</p> <p>14 A Mr. Washington, I think.</p> <p>15 Q Just for the word, we referenced the word --</p> <p>16 or the initials PDI. Does that have a common reference</p> <p>17 in Postal parlance, Postal language?</p> <p>18 A Predisciplinary interview.</p> <p>19 Q And are there certain offenses that can be</p> <p>20 where you can -- in the Postal Service where you can be</p> <p>21 removed without going through progressive discipline?</p> <p>22 A Yes.</p>	<p style="text-align: right;">108</p> <p>1 AWOLS -- AWOLs can be handled -- AWOL is, like I said</p> <p>2 in my opinion, is egregious. However, some carriers</p> <p>3 have been known to -- let's say, for instance, call in</p> <p>4 and say, "Hey, I'm not coming to work because I'm not</p> <p>5 feeling well." At the point of that call, that carrier</p> <p>6 can be notified that you need to bring in an acceptable</p> <p>7 documentation to substantiate your absence when you</p> <p>8 return. When they return to work the following day,</p> <p>9 the carrier may not bring any documentation in. So</p> <p>10 then they would be put in the system for an AWOL.</p> <p>11 There are other instances where a carrier</p> <p>12 will just not call or not show up for work for, you</p> <p>13 know, months -- I mean, weeks, even months at a time,</p> <p>14 so you have different circumstances, AWOL removal. I</p> <p>15 have been involved in removals for AWOL before. I'm</p> <p>16 trying to think at Friendship specifically. It was --</p> <p>17 there have been carriers put up for removal based on</p> <p>18 AWOL.</p> <p>19 THE COURT: At Friendship Heights?</p> <p>20 THE WITNESS: At Friendship, yes, sir.</p> <p>21 Carriers, clerks, mail handlers.</p> <p>22 THE COURT: There has or has not?</p>
<p style="text-align: right;">107</p> <p>1 Q And you named a few where you've already</p> <p>2 indicated AWOL?</p> <p>3 A AWOL, theft, destruction of mail, things of</p> <p>4 that nature.</p> <p>5 Q Is there anything that prohibits that -- in</p> <p>6 the collective bargaining agreement that prohibits</p> <p>7 that?</p> <p>8 A No, it's not.</p> <p>9 Q Anything in the regulations that prohibit</p> <p>10 issuing discipline without going through a progression</p> <p>11 for certain offenses?</p> <p>12 A No. I mean, you can -- like I said,</p> <p>13 depending on what that offense is.</p> <p>14 MR. FuRGESON: That's all I have, Your Honor.</p> <p>15 THE COURT: Mr. Noble?</p> <p>16 RE-CROSS EXAMINATION</p> <p>17 BY MR. NOBLE:</p> <p>18 Q Have you ever known any carrier in the</p> <p>19 Friendship Station to be AWOL?</p> <p>20 A Yes.</p> <p>21 Q And was that carrier removed?</p> <p>22 A Think about a removal for the AWOLs, all</p>	<p style="text-align: right;">109</p> <p>1 THE WITNESS: Has.</p> <p>2 THE COURT: Do you know who they are, names?</p> <p>3 THE WITNESS: You have to give me a moment</p> <p>4 with the names of people who have been placed for</p> <p>5 removal for AWOLs. You have to give me a moment with</p> <p>6 the names. Friendship consists of -- Friendship Heights</p> <p>7 consists of three delivery zip codes, 20016, which Mr.</p> <p>8 Noble was employed by; 20007, 20008. I worked in the</p> <p>9 entire building, all three zones, so if I can get a</p> <p>10 minute and -- Caleb Shorter, he's been put up for</p> <p>11 removal for AWOL.</p> <p>12 THE COURT: First name?</p> <p>13 THE WITNESS: Caleb Shorter.</p> <p>14 THE COURT: Spell the first name, please?</p> <p>15 THE WITNESS: I think it's C-A-L-E-B. He's</p> <p>16 been placed up for removal for AWOL. He is a</p> <p>17 custodian.</p> <p>18 THE COURT: And was he, in fact, removed?</p> <p>19 THE WITNESS: I think his removal was reduced</p> <p>20 to a second chance or last chance, last chance</p> <p>21 agreement, I think.</p> <p>22 THE COURT: Okay. Anybody else?</p>

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110	1 THE WITNESS: Give me a moment, let me think. 2 I can't recall any other names at this time. 3 THE COURT: You mean that there are other 4 names and you can't recall who they are or you can't 5 recall that anyone else was ever charged with AWOL and 6 disciplined? 7 THE WITNESS: Well, there is definitely -- 8 there have been definitely disciplines. But, like I 9 said, what I get mixed up because I've been in the 10 whole zone, thinking of employees' names that worked in 11 a different -- because it's all considered Friendship 12 Heights, but it's different delivery zip codes. Like I 13 said, 20007, 20008 and 20016. I'm trying to 14 distinguish all the employees in 20016. But, I mean, 15 that's the only one I can recall at this time. 16 THE COURT: Okay. 17 Sorry to disrupt you, Mr. Noble. Please 18 continue. 19 BY MR. NOBLE: 20 Q Do you know what Mr. -- is it Mr. Shorter? 21 Do you know what his seniority was? 22 A I do not.	112	1 MR. FuRGESON: That's all I have, Your Honor. 2 THE COURT: Mr. Noble? 3 MR. NOBLE: Nothing further. 4 THE COURT: Thank you. I want to thank you 5 for your testimony today, Mr. Colter, and I'm going to 6 ask you not to discuss your testimony with anyone until 7 after the close of this hearing, that means don't talk 8 about it. If you're not sure, just call Mr. Furgeson. 9 He'll know. It may be today. But if anybody talks to 10 you today, just say I can't talk about it. 11 THE WITNESS: Okay. 12 THE COURT: But you can when the hearing is 13 ended, all right? 14 THE WITNESS: Yes, sir. 15 THE COURT: You are excused from these 16 proceedings. 17 THE WITNESS: Do you want me to leave the 18 package here? 19 MR. FuRGESON: Yes. 20 (The witness was excused.) 21 The next witness, Your Honor. 22 THE COURT: It is 12 o'clock. Did we want to
111	1 Q All right. Do you know whether he had an 2 unblemished disciplinary record? 3 A I'm not sure what his record was. What his 4 record consists of. 5 MR. NOBLE: Nothing further. 6 THE COURT: Anything any other further - any 7 questions? 8 MR. FURGESON: Just a couple. 9 FURTHER REDIRECT EXAMINATION 10 BY MR. FURGESON: 11 Q Who made the decision to reduce Mr. Shorter 12 to a last chance agreement? 13 A I'm not sure. 14 Q Was it somebody in Labor Relations or above 15 you? 16 A It was somebody above me. 17 Q You didn't make the decision? 18 A No, above my level. 19 Q Other than 20016 -- zip code 20016, you 20 manage other zip codes? 21 A Well, I've worked in 20007 and 20008, as 22 well, but I currently manage in 16.	113	1 break about a half hour for lunch or do we want to keep 2 going? 3 MR. FURGESON: It's up to Mr. Noble; I can 4 go. 5 MR. NOBLE: I'd prefer to break now, Your 6 Honor. 7 THE COURT: Okay. It is 12 o'clock now, we 8 will reconvene at 12:30, and please have Mr. French -- 9 MR. FURGESON: He is already up here. 10 THE COURT: Okay. Sounds good. All right. 11 Let's go off the record. 12 (Whereupon, at 12:00 noon, the hearing 13 was recessed, to be reconvened at 12:30 14 p.m.) 15 AFTERNOON SESSION 16 THE COURT: On the record. We took a lunch 17 break; we are back. Mr. Noble? 18 MR. NOBLE: Mr. Furgeson e-mailed me 19 yesterday and said that they were -- admitting number 20 22, on my list, and I wanted that on the record, of the 21 admissions I had asked the Postal Service to make. 22 THE COURT: Okay.

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114	<p>1 MR. FURGESON: We -- I'll confirm that. We 2 do admit admission 22 that was provided to us on 3 October the 14th, 2011. 4 THE COURT: This is the request for 5 admissions? 6 MR. FURGESON: Yes. I have one letter in 7 response to it. He requested -- 8 THE COURT: Okay. 9 MR. FURGESON: You asked, I guess, what I 10 found for you not to record another person's 11 conversation. 12 THE COURT: Yes. The law, rule, or 13 regulation. 14 MR. FURGESON: It's the Employee and Labor 15 Relations Manual 667.2 and the following provisions 16 under that. I think specifically 67.21. 17 THE COURT: Do you have a copy of that? 18 MR. FURGESON: I've got to read it from the 19 e-mail. I don't have it with me. 20 THE COURT: Is there anybody that can fax you 21 a copy of it to the office? 22 MR. FURGESON: Sure.</p>	116	<p>1 MR. FRENCH: I actually have a copy in my 2 thumb drive. 3 MR. FURGESON: He's got one, I think. 4 THE COURT: If you have a thumb drive, we can 5 probably -- I can probably attach it to a computer here 6 and we can probably put it up. 7 MR. FURGESON: Do you want to do that? 8 THE COURT: Yes. I don't know how to -- 9 MR. FURGESON: You don't know how to get to 10 it on the thumb drive. 11 THE COURT: Right. 12 MR. FURGESON: Well, if you want him to help 13 after he testifies, help somebody do that. 14 THE COURT: It might be cleaner if you just 15 send it by fax. 16 MR. FURGESON: Okay. 17 THE COURT: Thank you, though, for your 18 assistance. 19 Okay, go ahead and make the arrangements. 20 MR. FURGESON: I'll go it as quickly as 21 possible. 22 THE COURT: Please send them either fax, care</p>
115	<p>1 THE COURT: Can you tell me the fax and the 2 area code to my fax number. 3 MR. FURGESON: Okay. 4 THE COURT: Area code 703 -- 5 MR. FURGESON: 703. 6 THE COURT: -- 756-7116. And then what I 7 will do is I'll provide Mr. Noble a copy of it and I 8 will have a copy of it, as well. 9 MR. FURGESON: Do you want me to do that now? 10 THE COURT: Have them do it and then I will - 11 - once I get it -- yes, would you please ask them to do 12 it, and then I will ask you if you want to enter it 13 into the record as a hearing exhibit since it came in 14 through the testimony of a witness. 15 MR. FURGESON: Can I step outside and do that 16 or do you want me -- 17 THE COURT: Why can't we go off the -- can 18 somebody do that for you? I mean, can you just ask 19 somebody to call. Would this gentlemen be able to do 20 it after -- would Mr. French be able to call after he - 21 - 22 MR. FURGESON: Yeah.</p>	117	<p>1 of my attention or your attention, and we will go off 2 the record for two minutes while you do that. 3 (Short recess.) 4 THE COURT: Both of you remind me when Mr. 5 French is finished testifying for me to go and look for 6 the fax and we'll -- 7 MR. FURGESON: My secretary is running down 8 the paralegal if she's not available. As soon as she 9 runs her down, she'll send it. 10 THE COURT: Okay. We're back on the record. 11 Are you Mr. French? 12 Mr. FRENCH: Yes. 13 THE COURT: Mr. French, do me a favor, would 14 you please come up here. My name is Daniel Turbitt. 15 I'm the Administrative Judge in these proceedings. 16 Before we proceed with your testimony, I need to ask 17 you whether you have an objection to taking an oath? 18 MR. FRENCH: No. 19 THE COURT: Okay. Please raise your right 20 hand and repeat after me. I, state your name, sir. 21 MR. FRENCH: I, William French -- 22 THE COURT: Do solemnly swear --</p>

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118	1 MR. FRENCH: -- do solemnly swear -- 2 THE COURT: -- to tell the truth -- 3 MR. FRENCH: -- to tell the truth -- 4 THE COURT: -- the whole truth -- 5 MR. FRENCH: -- the whole truth -- 6 THE COURT: -- and nothing but the truth -- 7 MR. FRENCH: -- and nothing but the truth -- 8 THE COURT: -- so help me God. 9 MR. FRENCH: -- so help me God. 10 THE COURT: Thank you, sir. Please be 11 seated. Mr. Furgeson, your witness. 12 WHEREUPON, 13 WILLIAM FRENCH 14 called as a witness, having been first duly sworn, was 15 examined and testified as follows: 16 DIRECT EXAMINATION 17 BY MR. FURGESON: 18 Q Mr. French, what's your title? 19 A Supervisor customer services. 20 Q Where is that at? Where is that located? 21 A At Friendship Post Office. 22 Q Just very briefly, what are your	120	1 Q And this is a notice of his proposed removal? 2 A Correct. 3 Q And did you take that action? 4 A Yes. 5 Q Why did you take that action? 6 A Mr. Noble was absent without leave for an 7 extended period of time from work, which is a 8 terminable offense, and that's why. 9 Q Have you ever issued a removal for AWOL 10 before other than for Mr. Noble? 11 A Yes. 12 Q And did you ever do it for employees who've 13 had -- who have not had prior discipline, a removal for 14 AWOL? 15 A I've done a removal for AWOL for employees 16 whom I have not issued prior discipline to. I'm not 17 sure if they had received prior discipline before my 18 involvement. If that makes any sense. 19 Q Yeah. Okay. Was there any discipline listed 20 on the removal; do you know? 21 A On the example that we're talking about or a 22 different one?
119	1 responsibilities of your position? 2 A Daily supervision of the delivery unit as 3 well as window services, entering mail that was 4 written, customer assisted window. 5 Q And do you know the Appellant, Mr. Noble? 6 A Yes. 7 Q And are you his supervisor? 8 A Yes. 9 Q I'll ask you to -- there's some documents in 10 front of you, Tab 4A, do you see that? 4B, excuse me. 11 4B? 12 A 4B. 13 (Examining the document.) 14 Q Are you familiar with this document? 15 A Yes. 16 Q And what is this document? 17 A That is a notice of proposed removal that 18 was mailed to Mr. Noble. 19 Q And did you initiate that? 20 A I initiated the mailing, yes. 21 Q Did you sign it? 22 A Yes.	121	1 Q Yeah. 2 A No, there wasn't. 3 Q Okay. And do you know the name of that 4 employee? 5 A Yes. 6 Q What was his name? 7 A His name is Caleb Shorter. 8 Q And do you believe that what you issued then 9 and now was in accordance with the labor agreement, the 10 collective bargaining agreement? 11 A Yes. 12 Q Have you ever had one reversed? 13 A The removal? 14 Q Yeah. 15 A No. 16 THE COURT: Wait a minute, please. Will you 17 please spell Mr. Shorter's first name? 18 THE WITNESS: C-A-L-E-B. 19 THE COURT: Thank you. 20 BY MR. FURGESON: 21 Q Prior to issuing this notice of removal are 22 you aware that a PDI was conducted, which is a

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<p style="text-align: right;">122</p> <p>1 predisciplinary interview with Mr. Noble? 2 A Yes. 3 Q And do you know who did that? 4 A Mr. Antonio Jones. 5 Q How did you become aware of that? 6 A That a predisciplinary interview was 7 conducted? 8 Q Uh-huh. 9 A I was actually in the office right next door 10 when it was conducted. 11 Q Do you know if it was completed or not? 12 A No, it was not completed. 13 Q Now, did you have your -- prior to issuing 14 this notice of removal, did you have it reviewed by 15 anyone? 16 A Yes. The disciplinary -- the process is I 17 request disciplinary action. It's called a 18 disciplinary action request. I request disciplinary 19 action from the Labor Department, Labor Relations 20 Department. 21 Q And why are you required to do that? 22 A That's just the process for any step of</p>	<p style="text-align: right;">124</p> <p>1 A Yes. 2 Q And what is that document? 3 A That is the disciplinary action request that 4 I filled out for the proposed removal. 5 Q And how did they respond back? 6 A They replied with an operation to pursue the 7 disciplinary action. 8 Q Did they draft it or did you draft it or Did 9 you draft the removal? 10 A I did not draft it, no. 11 Q Who drafted it; do you know? 12 A I don't know. I'm assuming it was somebody 13 at Labor Relations Department. 14 Q And you read it and signed it? 15 A Correct, yeah, right. I proofread it. 16 Q The Appellant signed it, have any medical 17 after he signed it, have any medical certificates 18 showing his ability to work or not work? At the time 19 you signed it, were you aware of any medical 20 certificates? 21 A When he signed the document? 22 Q Yes.</p>
<p style="text-align: right;">123</p> <p>1 discipline whether it is a letter of warning, a 2 suspension or a proposed removal, that's the process. 3 Q And do they ever comment or feedback, give 4 you feedback? 5 A They often comment and feedback, yes, for -- 6 Q Like if violates the collective bargaining 7 agreement or anything like that? 8 A Yeah, exactly, there have been instances 9 where I request discipline and they tell me that it was 10 not an incident that required discipline, that it 11 needed discipline or what have you. 12 Q Now, did you request disciplinary approval 13 for this removal for Mr. Noble? 14 A Yes. 15 Q And I'll ask you to look in front of you at 16 Tab 4D. Do you see that there? 17 A (Examining the document.) 18 THE COURT: D as in dog? 19 MR. FURGESON: D as in dog, yes, that's 20 correct correct. 21 BY MR. FURGESON: 22 Q Are you familiar with that document?</p>	<p style="text-align: right;">125</p> <p>1 A The only medical certificate I'm aware of 2 was one that Mr. Noble had brought into work stating 3 that he could -- I'm going to paraphrase. I want to 4 say able to resume normal duties or something of that 5 nature, a regular work schedule, something like that. 6 Q I'd ask you to look at a prehearing 7 submission which has Exhibits 1, 2 and 3. Do you see 8 that document in front of you? 9 A One of the other documents here? 10 Q Let me make sure you've got the right one. 11 It's over here, I think. Excuse me, I mean, that's to 12 the back. I'd ask you to look at -- well, here it is. 13 Exhibit No. 1. 14 A (Examining the document.) 15 THE COURT: What are you having the witness 16 look at? 17 MR. FURGESON: Exhibit No. 1 of the 18 prehearing submission. 19 BY MR. FURGESON: 20 Q Have you seen this before? 21 A This is what I was just referring to. The 22 disability certificate - title, that Mr. Noble turned</p>

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126	<p>1 in.</p> <p>2 Q Did Mr. Noble ever at any time after the 23rd</p> <p>3 of February contact you about coming back to work?</p> <p>4 A No.</p> <p>5 MR. FURGESON: I'll pass the witness, Your</p> <p>6 Honor.</p> <p>7 THE COURT: Mr. Noble?</p> <p>8 CROSS EXAMINATION</p> <p>9 By MR. NOBLE:</p> <p>10 Q Who do you understand made the decision that</p> <p>11 I should be removed?</p> <p>12 A I'm the one that requested the disciplinary</p> <p>13 action. I'm the ultimate one that made the decision.</p> <p>14 Now, I can say there were conversations with, again,</p> <p>15 the Labor Relations Department, but I'm the one that</p> <p>16 made the decision.</p> <p>17 Q There were conversations between you and the</p> <p>18 Labor Relations Department?</p> <p>19 A Well, between -- well, first of all, I need</p> <p>20 to get confirms from my immediate supervisor. So</p> <p>21 conversations between myself and -- conversations</p> <p>22 probably is not based, it's correspondence between --</p>	128	<p>1 which point I told you that recording is not allowed.</p> <p>2 You can't record, you know, whether it is video</p> <p>3 pictures, what have you in the Post Office.</p> <p>4 Q Do you recall me asking you to tell me by</p> <p>5 what regulation are recording in the Post Office was</p> <p>6 prohibited?</p> <p>7 A Now, that you mentioned it, I do -- at the</p> <p>8 conclusion of that conversation, you did ask that, yes.</p> <p>9 Q And you never got back to me and told me what</p> <p>10 regulation that was, did you?</p> <p>11 A By the end of that conversation, no, I did</p> <p>12 not. I pursued it to try to find out exactly what that</p> <p>13 regulation was. I knew the regulation was in place,</p> <p>14 but, as you know, numerous regulations in the Postal</p> <p>15 Service. By the time I had found the regulation, it was</p> <p>16 not -- it may not have even been that same day. I don't</p> <p>17 think. And I don't think -- I'm not sure if I had seen</p> <p>18 you since then.</p> <p>19 Q Now, you said that you knew that Tony Jones</p> <p>20 had had a PDI with me, correct?</p> <p>21 A Yes. I knew, yes.</p> <p>22 Q And you were aware of that because you were</p>
127	<p>1 as far as the disciplinary action request and what</p> <p>2 happened.</p> <p>3 Q How did it happen that Sterling Colter signed</p> <p>4 the notice of proposed removal? Did you take him a</p> <p>5 copy of the letter?</p> <p>6 A The concurrence letter you mean?</p> <p>7 Q Yes.</p> <p>8 A Yeah, I did. Yes.</p> <p>9 Q And did you hand it to him?</p> <p>10 A Yes.</p> <p>11 Q And did he sign it?</p> <p>12 A He did sign that letter, yes.</p> <p>13 Q And he gave it back to you?</p> <p>14 A Yes.</p> <p>15 Q I told you, didn't I, during the fall of 2010</p> <p>16 that I was recording your conversations with me and</p> <p>17 Sterling Colter's conversations with me?</p> <p>18 A No. As I recall it there was an instance</p> <p>19 where there was a conversation between you and I, I</p> <p>20 believe Mr. Colter was at, as far as I can recall, but</p> <p>21 upon conclusion of that conversation, you had mentioned</p> <p>22 something about the conversation being recorded, at</p>	129	<p>1 in the office next door; is that right?</p> <p>2 A I knew there was one scheduled. He had</p> <p>3 mentioned at one point there was one scheduled. It so</p> <p>4 happened -- I mean, I was conducting a predisciplinary</p> <p>5 interview with a different employee, a clerk in the</p> <p>6 office next door. I was having a meeting with another</p> <p>7 employee and their shop steward at the time, I do</p> <p>8 recall.</p> <p>9 Q How, if at all, did you learn the substance</p> <p>10 of the PDI between me and Tony Jones?</p> <p>11 A By substance, you mean?</p> <p>12 Q What transpired at the -- during the</p> <p>13 interview?</p> <p>14 A Well, the only thing I -- what stands out to</p> <p>15 me is at the conclusion of the interview, you had left</p> <p>16 the office and were speaking -- your voice was raised</p> <p>17 telling Mr. Jones that -- and, again, I'm paraphrasing,</p> <p>18 but you'd come back to work when you get paid or</p> <p>19 something of that nature.</p> <p>20 And I heard that in the other office and</p> <p>21 that's all I know of the interview itself outside from</p> <p>22 the actual predisciplinary hearing notes.</p>

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130	<p>1 Q On January 13th, 2011, I had submitted a 2 request to you for leave, hadn't I? 3 A Yes. 4 Q And you approved that request for leave, 5 didn't you? 6 A I did. 7 Q And if you had properly processed that leave 8 request, I would have been paid for that leave on 9 January 21st, wouldn't I? 10 A I'm not sure. That sounds like the right 11 pay period, pay date, yes. There was one hiccup in 12 that. I believe the leave request was for -- it was 13 over a week, maybe 10 days, something like that. By 14 the time I received the leave request and the 15 documentation, which I believe it's the documentation 16 you mentioned earlier, that pay week closed so you had 17 been in the system in an unpaid status and there was a 18 matter performing a pay adjustment in order to have 19 that week paid to you. 20 Q So do I understand that it's your assertion 21 that something happened beyond your control that caused 22 the payment of the leave request to be delayed for more</p>	132	<p>1 THE COURT: Okay. Let me just -- a few 2 pointers. What you just did, Mr. Noble, was testify 3 through a question -- any question that you ask is not 4 testimony -- it is not evidence. I know that you ended 5 it with a question, but all the stuff that appeared 6 before that was just testimony on your behalf. 7 You will be allowed to testify later on that 8 and other issues, any issue that you want to discuss. 9 Any argument that you make in this case is not proven 10 evidence. It's just argument. The Agency has its 11 arguments, you have your arguments. Any evidence is 12 documents, facts, things like that that has been -- or 13 stipulations that's been proven. But just your 14 argument does not make it a fact. So you can ask this 15 gentlemen questions about whether he did or did not pay 16 you for holiday leave and why, but please -- this is 17 the -- you've almost done this a couple of other times, 18 but you didn't. You did it now. I'm just asking you 19 as a way to streamline the process; I will give you an 20 opportunity to testify. Please be careful in your 21 questioning to make sure that it is -- you're going to 22 elicit the facts and testimony from the witness, not</p>
131	<p>1 than two months? 2 A As far as being more than two months, I 3 really can't answer that. If I had received the leave 4 request and the documentation while that pay week was 5 opened, there would be -- there wouldn't have been an 6 issue. Again, the leave request was approved. I 7 approved it myself, but it was after that pay week had 8 been closed. So that is what required the pay 9 adjustment to be done. It probably should -- you 10 probably should have been paid earlier than two months 11 -- two months later, but, again, I... 12 Q The record to this point shows, you said, I 13 contend that for 35 years, the Postal Service 14 flawlessly gave me for holidays for which I was 15 eligible for holiday -- and that after you became my 16 supervisor, I was no longer paid holiday pay for 17 holiday pay for which I was eligible. Can you explain 18 why that happened? 19 MR. FURGESON: Objection. He said the record 20 shows he had been flawlessly paid for 35 years. I 21 don't know of anything in the record that has indicated 22 that.</p>	133	<p>1 from you. Okay. 2 So you can ask about the question, but just 3 because you said it in the record doesn't make it a 4 fact. It's just an argument. 5 Do you want that question -- can you rephrase 6 the -- the objection was sustained. Can you rephrase 7 the question? 8 Mr. NOBLE; I'm trying. 9 BY MR. NOBLE: 10 Q It's true, isn't it, that when an employee -- 11 let me strike that. It's true isn't it that an 12 employee is eligible for holiday leave pay if the 13 employee is in a pay status on the last hour before a 14 holiday or the first hour after a holiday? 15 A Yes. 16 Q And it's also true, isn't it, that when an 17 employee has established eligibility for holiday pay, 18 that the supervisor need take no action in order for 19 the employee to be paid for the holiday leave pay? 20 A Correct. The time and attendance collection 21 system automatically pays the holiday pay to the 22 employee.</p>

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134	<p>1 Q So if I was not paid for five days for which 2 -- for five holidays for which I was eligible to be 3 paid, that would mean that somebody altered Postal time 4 records? 5 A Not that I know of. You would have to -- 6 the last time I saw you, you had asked a question about 7 the pay and you mentioned the same thing that the 8 policy last hour before a holiday or the first hour 9 after a holiday, the employee would need to indicate 10 that -- I agreed, of course. And you mentioned that 11 you did not get paid for a few of those. I want to say 12 it was the Columbus Day and Veterans Day in November is 13 what we were discussing. And you mentioned that you did 14 not get paid. And I told you it didn't make sense 15 since you were in pay status for either the day before 16 or the day after for each holiday. And that I would try 17 to find out why that was because it didn't make sense. 18 I had never seen that happen before. 19 Again, since then, I haven't -- we haven't 20 spoken; I haven't seen you, so I haven't come up with 21 an answer. Honestly, I had forgotten about it. 22 Q Do you recall a union steward named Leon</p>	136	<p>1 another carrier on my route, didn't you? 2 MR. FURGESON: Objection. I don't see the 3 relevance of something that occurred after he was 4 removed or another carrier. I just don't see the 5 relevance, Your Honor. 6 THE COURT: I agree, but I'll let you answer 7 the question, sir. 8 THE WITNESS: I performed street observations 9 on Mr. Seawright. He has been on your route, but I 10 don't recall that particular day. That instance in 11 particular, no. 12 BY MR. NOBLE: 13 Q Can Mr. Seawright complete my route in eight 14 hours without assistance? 15 A I don't know. 16 Q I'm showing you Exhibit QQ, Appellant's 17 Exhibit QQ. 18 MR. FURGESON: I don't have a copy of that; I 19 don't know what he is referring to. I haven't seen it. 20 It's not part of the exhibits that were approved for 21 the hearing. I'm not sure what it's being offered for. 22 THE COURT: Did you submit this into the</p>
135	<p>1 Tucker approaching you in early December 2010 to 2 discuss an issue with you concerning the holidays for 3 which I have not been paid? 4 A I don't -- I do recall Mr. Tucker 5 approaching me numerous times for different grievances, 6 but I don't recall that one in particular. 7 Q Are you aware of a letter I wrote to Tony 8 Jones in February 2010 -- 2011, excuse me, telling Tony 9 Jones that I considered myself to be constructively 10 suspended from my letter carrier work? 11 A No, I'm not. 12 Q It is your understanding, isn't it, that 13 letter carrier routes should be adjusted to as nearly 14 eight hours work per day as possible? 15 A Yes. 16 Q And it's your understanding, isn't it, that 17 that is computed on the pace of the regular carrier on 18 the route? 19 A In as far as the street portion of the 20 route, yes. 21 Q On September 6th, 2011, you spent time on the 22 street observing the work of Terrence Seawright and</p>	137	<p>1 record, sir? 2 MR. NOBLE: I did, Your Honor. 3 THE COURT: Okay. When did you submit this? 4 MR. NOBLE: Yesterday. 5 THE COURT: Okay. Did you get a copy of what 6 he submitted yesterday? 7 MR. FURGESON: It may have come. I was out 8 of the office. If it came, I didn't receive it. 9 THE COURT: In the interest of saving time, 10 since you don't have a copy of it, since it was 11 submitted yesterday, I'm going to -- yes, we can look 12 at my copy of it. 13 MR. FURGESON: I would -- I'm going to just 14 object for the record too, because I believe this is 15 -- 16 THE COURT: Well, before you -- why don't you 17 look at the -- 18 MR. FURGESON: Okay. 19 THE COURT: -- so you know what it is that 20 we're talking about. And when you finish looking at 21 it, give it back to me, please, and then -- 22 MR. FURGESON: (Examining the document.)</p>

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138	<p>1 THE COURT: You know what it is? 2 MR. FURGESON: Yeah. I don't know what it 3 is, but I see what it is. It has something to do -- 4 I've never seen one before. It's a work hour, workload 5 report for a carrier at Friendship, and I assume it is 6 correct, but the things that Mr. Noble, I don't 7 understand everything here, but -- 8 THE COURT: You are saying you don't have a 9 copy of any of the things that the Appellant submitted 10 yesterday? 11 MR. FURGESON: He may have submitted them. 12 Did you submit them by fax? 13 MR. NOBLE: Uh-huh. 14 MR. FURGESON: Yeah, I was out of the -- I 15 was not in the office. I was working, but not in the 16 office. 17 THE COURT: Okay. 18 MR. FURGESON: I haven't seen a copy. Again, 19 it is not part of the approved exhibits, it's -- I mean 20 there's a ton of stuff that appears to be here. I 21 would object not only the fact that I didn't receive it 22 in a timely fashion, but I don't think it's even --</p>	140	<p>1 you were directly ordered to do, Mr. Noble? 2 MR. NOBLE: I hadn't finished putting my case 3 together. I still haven't finished putting my case 4 together. Unlike Mr. Furgeson, I don't have an office 5 full of lawyers and secretaries and paralegals, I am 6 working by myself. 7 THE COURT: I understand, that's why I've 8 given you more time so that you can meet these 9 deadlines. This hearing is over a month after the date 10 that I had originally scheduled it. I understand that, 11 that's why I've given you more time. 12 Now, you are entering exhibits, a lot of 13 exhibits, the day before the hearing. Actually, this 14 came in at 9:42 yesterday. 15 MR. NOBLE: Right. That was the deadline the 16 Judge had set was 12 o'clock yesterday. 17 THE COURT: But you're now submitting -- 18 okay. That for anything that you were going to provide 19 to the other side. This is different. You are 20 submitting these into the record now as exhibits. You 21 want these to be submitted into the record as exhibits; 22 is that correct?</p>
139	<p>1 although you're giving a lot of latitude here, I don't 2 think it's relevant, and I'm going to interpose an 3 objection for the record. 4 THE COURT: Okay. Well, a little 5 housecleaning. All of the exhibits that you submitted 6 -- there are quite a few that you submitted yesterday - 7 - are you asking that they all be entered into the 8 record? 9 MR. NOBLE: Yes. 10 THE COURT: Okay. You have received them, so 11 you have to now look at them and I need to -- I want to 12 do this quickly. You know what, do you object to any 13 of the exhibits that he submitted yesterday? 14 MR. FURGESON: Yes, I object to all of them 15 because I didn't see them and I haven't had a chance to 16 go through them. 17 THE COURT: Okay. 18 MR. FURGESON: And the 11th hour, it's 19 unseemly and it is improper to have this done at the 20 last minute. 21 THE COURT: Okay. Why didn't you submit 22 these earlier with your prehearing submissions which</p>	141	<p>1 MR. NOBLE: Yes. And I submitted them to Mr. 2 Furgeson. 3 THE COURT: Okay. 4 MR. FURGESON: I understood what was due by 5 noon was my responses to his late issue of discovery on 6 the 14th of October. And that's what I did. 7 MR. NOBLE: That was -- that was what the 8 Judge said in his first order, and the Judge modified 9 that. 10 THE COURT: When did you get these documents, 11 sir? 12 MR. NOBLE: Oh, I've been collecting them 13 this week during the course of discovery and -- 14 THE COURT: None of these documents you had 15 in your possession prior to this week. Is that what 16 you're stating? 17 MR. NOBLE: None of them I had in my 18 possession and had decided that I was going to use 19 this. 20 THE COURT: You said -- that's not what I 21 asked you. You just threw something else in there. 22 MR. NOBLE: But, Your Honor, I think I have -</p>

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142	<p>1 - I have a huge amount of documents in my -- 2 MR. NOBLE: Mr. Noble, okay -- 3 MR. NOBLE: -- in -- 4 THE COURT: Mr. Noble, I'm going to ask you a 5 question. 6 MR. NOBLE: Yes, sir. 7 THE COURT: And please answer my question. 8 My question was: This that you submitted yesterday, 9 are any of these documents that you've had in your 10 possession prior to yesterday? 11 MR. NOBLE: Yes. All of them were in my 12 house prior to yesterday. 13 THE COURT: You've been complaining all along 14 that the Agency is giving you stuff at the last minute 15 that you can't take a look at. How is this any 16 different? This is the largest file of documents that 17 has been submitted thus far in this appeal, by far. I 18 have four volumes in this case. This is by far, and 19 you've had it before today. You did not allow the 20 opposing counsel an opportunity to even -- I'm sure you 21 faxed it to him, but he didn't have an opportunity to 22 look at all these documents. That's why -- now, you're</p>	144	<p>1 Now, you are asking a question about the 2 Appellant's Exhibit QQ, which was just submitted 3 yesterday into the record. 4 BY MR. NOBLE: 5 Q Can you identify Exhibit QQ? 6 A Yes. It is a work hour workload report. 7 Q Can you summarize what data it shows? 8 A This particular report shows times, in 9 essence, the amount of time it takes a particular 10 carrier -- okay, one particular carrier on a particular 11 assignment, and it breaks it down by time in the 12 office, time on the street, the volume of mail that was 13 available, and this particular one is from December 14 2009 through October 2010. 15 Q And does the individual carrier that -- the 16 date that is shown on that report is me, isn't it? 17 A Yes. Yes. 18 Q And for my bid assignment, which is Route 19 1611, correct? 20 A Yes. 21 Q And, again, can you read the total times 22 shown on that report for the days that I worked?</p>
143	<p>1 introducing them through a witness. This is not 2 orthodox. 3 However, your objection to all of these 4 documents being entered in the record is denied. 5 I am showing you great latitude, Mr. Noble. 6 You keep complaining about what the Agency is doing to 7 you. You are doing the exact same thing. Let the 8 record reflect that the -- I don't know how many pages 9 it is because they're all not -- well, they're all not 10 numbered in order. They're in separate files and 11 documents. I don't even know if they're in proper MSPB 12 format because of the fact that they're not numbered in 13 sequential order. They're not paginated, they're not 14 indexed, nonetheless, I will accept them into the 15 record. I will look at their probative value; I will 16 look at their weight. To be honest, I haven't had a 17 chance to look at them all either. And the fact that 18 you've had them in your possession and you dumped them 19 on us the day before the hearing is -- you're doing the 20 exact same thing you're complaining of. 21 Your objection to these documents is denied, 22 and I'm entering them into the record.</p>	145	<p>1 A (Examining the document.) 2 Do you want me to read each one? 3 Q Please? 4 THE COURT: Just tell me what column it is, 5 the record will speak for itself. Just tell me which 6 column it is? 7 THE WITNESS: It is under the total time 8 section, there's a column titled "Actual ACP total." 9 THE COURT: Okay. He doesn't have to read 10 each and every time; I can read the time that it says 11 on the document. 12 MR. NOBLE: Okay. 13 BY MR. NOBLE: 14 Q Okay. Does it appear to you from looking at 15 that report that I can complete my assignment within 16 eight hours? 17 A (Examining the document.) 18 Based on this information here -- based on this 19 information here, you averaged 10 hours or so. 20 Q Okay. And that average includes some days 21 that are -- show that I can deliver the route in zero 22 minutes and zero seconds, correct?</p>

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146	<p>1 A What shows that you had zero minutes and 2 zero seconds of street time -- of time and there was 3 assistance to the assignment. 4 Q I have complained to you, haven't I, on 5 numerous occasions that my route is not properly 6 adjusted? 7 A I only recall one instance when we had a 8 discussion about your route being -- you claim was out 9 of adjustment. And during that discussion that we had, 10 I mentioned to you that I would be happy to what we 11 call "walk the route," evaluate the street time of the 12 route with you, but in order to do so, I would need you 13 to come to work; I would need you to be available to 14 carry the entire assignment, which, to my knowledge, 15 never happened. 16 Q It's true, isn't it, that the collective 17 bargaining agreement establishes a pecking order for 18 assignments of overtime? 19 A Yes. 20 Q And it's true, isn't it, that the collective 21 bargaining agreement provides that the last category of 22 employees who should be mandated to work overtime are</p>	148	<p>1 THE COURT: Okay. This X is the first 2 exhibit that you submitted yesterday, right? 3 MR. NOBLE: I believe that's correct. 4 THE COURT: Okay. This is unorthodox but I 5 have to do it because Mr. Furgeson doesn't have a copy 6 of it because we got this big dump of these exhibits 7 yesterday which are all issues that you have identified 8 from the very beginning in this appeal, and the fact 9 that we're getting documents at this late hour on them, 10 but Mr. Furgeson has to know what you're showing the 11 witness. 12 MR. NOBLE: There's several pages to the 13 exhibit. 14 MR. FURGESON: Well, I've already noted my 15 objection on just the way we got the documents. I 16 object, again, on the fact -- on the other basis is 17 what relevance does this have to do with his 18 termination removal for attendance. And I would enter 19 that objection, as well. 20 THE COURT: Okay. Your objection is noted, 21 and it is denied. 22 You may read the document.</p>
147	<p>1 full-time regulars who are not on the overtime desired 2 list? 3 A Correct. 4 Q And I am a full-time regular not on the 5 overtime desired list, correct? 6 A I believe so. 7 Q Most of the carriers in Zone 16 are on the 8 overtime desired list, aren't they? 9 A More than likely, many, if not most, yes. 10 Q On several occasions, the Postal Service 11 admitted -- in the material I received yesterday, you 12 instructed me to work overtime in October and November, 13 correct? 14 A You're referring to the 3996s -- 15 Q Yes. You instructed me via the 3996 to work 16 overtime? 17 A Yes, as per the conversations we had about 18 those 3996s. We had -- yes, is the answer. Yes. 19 Q You're aware, aren't you, that my physician 20 has recommended that I not work overtime? 21 A No, I'm not aware. 22 Q I'm showing you Exhibit X.</p>	149	<p>1 MR. FURGESON: (Examining the document.) 2 BY MR. NOBLE: 3 Q Is it your position that you have never seen 4 any of these documents? 5 A Yes. Not that I recall. Now, I want to 6 mention the first -- 7 THE COURT: Okay. Just to make sure I got 8 the answer right because there was a negative. 9 Have you ever seen these documents before? 10 THE WITNESS: There's only one document I 11 could possibly have seen. I don't recall seeing it. 12 THE COURT: Which one? 13 THE WITNESS: The very last one. I didn't 14 begin working in that delivery unit until middle to 15 late September of 2010. So the ones dated prior to 16 that I would not have seen. I believe the last one is 17 dated in October, the one I just saw. 18 MR. FURGESON: October of what year? Was it 19 2010? 20 THE WITNESS: 10, yes. 21 THE COURT: Okay. So you could not have seen 22 the one in October of 2010?</p>

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150	1 THE WITNESS: I'm not saying -- I don't 2 recall seeing it. I certainly may have. The ones 3 prior to that, there's no way I would have seen them. 4 THE COURT: So pages 1 through 4, you were 5 not there? 6 THE WITNESS: Correct. 7 THE COURT: And page 5, you were there, but 8 you don't recall seeing these documents? 9 THE WITNESS: Correct. 10 THE COURT: Mr. Noble, please continue. 11 BY MR. NOBLE: 12 Q Shortly after you issued the notice of 13 removal to me -- strike that. 14 Do you know a letter carrier in Zone 16 named 15 -- called G? 16 A Yes. 17 Q And shortly after you issued the notice of 18 removal to me, did you tell G that you had just caught 19 a big fish? 20 A No. 21 Q Do you know that I had emergency heart 22 surgery in 2008?	152	1 BY MR. NOBLE: 2 Q You testified that you sent a request to 3 Labor Relations for a notice of removal; is that 4 correct? 5 A Correct. 6 Q And was something sent to them on March 3rd; 7 is that correct? 8 A Yes, that's correct. 9 Q Do you have that in front of you? 10 A I do, yes. March 3rd. 11 Q Have you ever sent such a request to Labor 12 Relations before? 13 A By such a request, what do you mean? 14 Q Well, a request for disciplinary notice. 15 A Yes. 16 Q Okay. And how long does it usually take for 17 Labor Relations to get back to you on that? 18 A It varies. I've had them back as early as 19 two days later, maybe a day later at times. Other 20 times, a few weeks. 21 Q Do you know what happened -- well, did you 22 receive the notice of proposed removal on April 28th,
151	1 A No. 2 Q How many PDIs do you do on a typical week? 3 A It varies. I'm sure there have been weeks 4 I've done none, and there are weeks where I do three, 5 four, five a day. It varies. 6 Q Three, four, five a day? 7 A Sure. 8 Q Now, there are currently 36 routes in Zone 9 16; is that correct? 10 A Thirty-five and the one I'm doing now, 36 11 routes. 12 Q Do you know who the manager in Zone 16 is 13 now? 14 A The current acting manager -- that's 15 actually a tough question. I believe the manager is Mr. 16 Yves Frederique. 17 THE COURT: Can you spell that first and last 18 name, please 19 THE WITNESS: The first name, Y-V-E-S, last 20 name is -- as well as I can remember, F-R-E-D-E-R-I-Q- 21 U-E. 22 THE COURT: Thank you.	153	1 2011? 2 THE COURT: Just for the record, you mean the 3 draft notice of proposed removal. Is that what you're 4 discussing? Not the final? 5 MR. NOBLE: I'm talking about the notice of 6 proposed removal dated April 28th, 2011. 7 MR. FURGESON: I would just interject an 8 objection for clarity. I don't know, get it back from 9 whom or where? Are you talking about Labor Relations? 10 MR. NOBLE: Yes. 11 MR. FURGESON: Okay. 12 THE COURT: In my recollection, did you 13 testify that you had made some changes or alterations 14 to the draft? 15 THE WITNESS: Yes. I -- 16 THE COURT: That's why I need to know. Are 17 we talking about the draft that came from ELMR or are 18 we talking about the final document? 19 MR. NOBLE: I completely missed that. 20 BY MR. NOBLE: 21 Q You sent a request to ELMR and they sent 22 something back and --

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154	<p>1 A ELMR? 2 THE COURT: Employee Labor Relations, sorry. 3 THE WITNESS: The disciplinary action request 4 gets sent to the Labor -- Labor Relations. 5 BY MR. NOBLE: 6 Q Okay. And they sent something back that you 7 edited? 8 A I proofread and edit every action, every 9 disciplinary action I issue. 10 Q Okay. And you edited the -- so that I 11 understand, did you get the notice back from Labor 12 Relations in electronic form? 13 A Yes. 14 Q Okay. And you edited, made editing changes 15 to it? 16 A Honestly, I don't recall. I do on many 17 different -- I do it often, but on this particular one, 18 I don't recall. 19 Q Okay. And did you get it back on -- from 20 Labor Relations on April 28th, 2011? 21 A That's what I was just trying to recall. I 22 don't know. I'm not sure when it came back. You know,</p>	156	<p>1 interview that's conducted prior to any investigation, 2 meaning an employee having the opportunity to discuss 3 the matter, what have you. 4 Q Okay. And you didn't conduct the 5 predisciplinary interview with me, did you? 6 A No. 7 Q And so far as you're aware, there was no 8 predisciplinary interview conducted with me concerning 9 the dates listed in the charge on April 28th, 2011 10 letter; isn't that right? 11 A I'm not aware of a predisciplinary interview 12 for those dates, correct. 13 Q On the dates that you instructed me to work 14 overtime in October and November 2011, I didn't work 15 overtime; isn't that correct? 16 A I think you meant 2010, right? 17 Q I'm sorry, 2010, yes. 18 A I don't recall you working overtime, no. 19 Q Do you recall speaking with Paris Washington 20 about my removal? 21 A Can you be more specific about the time 22 frame?</p>
155	<p>1 I see that's when I mailed it, but I may have had it 2 for a few days until I had a chance to review it. I'm 3 not sure. 4 Q It says in the notice of proposed removal 5 that -- do you have that there? 6 A I do, yes. 7 Q On the second page, a little over halfway 8 down, it includes the statement "Full due process 9 consideration has been extended to you in this matter." 10 Do you see that? 11 A Yes. 12 Q Is that something that you put in? 13 A I don't know. I don't believe so, but I 14 don't know. 15 Q What do you think that statement means? 16 A It seems fairly clear to me. That due 17 process consideration has been extended in this matter. 18 Q Okay. Well, what do you understand the due 19 process consideration to be? 20 A Well, I suppose generally we're talking as 21 far as the due process is concerned, we're talking 22 predisciplinary interviews or I guess the previous</p>	157	<p>1 Q I'm sorry. 2 In 2011, do you recall talking with Paris 3 Washington about my removal? 4 A I don't recall any particular discussion. I 5 know that we had conversations about it. 6 Q Do you remember anything about the 7 conversations? 8 A Well, generally -- generally, with a matter 9 of Mr. Washington asking if it had been mailed, if it 10 had been delivered, if I had received confirmation of 11 delivery, if grievances had been filed, you know, 12 general questions about the process, yes. 13 THE COURT: And just for the record, when you 14 say had it been mailed, is he talking about the notice 15 of proposed removal? 16 THE WITNESS: The actual notice of proposed 17 removal, yes. 18 BY MR. NOBLE: 19 Q I sent you a copy, didn't I, of a letter that 20 I had written to Brandon Toatley and expressing 21 unhappiness with my treatment in Zone 16? 22 A I don't recall receiving any -- you say you</p>

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158	<p>1 mailed me -- sent me a letter that you sent to Mr. 2 Toatley? 3 Q Correct. 4 A No, I don't recall. 5 Q you testified that being AWOL is a terminable 6 offense, correct? 7 A Yes. 8 Q And does that mean that it's your opinion 9 that it's a terminable offense? 10 A No. I believe it is in the Employee Labor 11 Relation's Manual. I'm not quite sure which manual 12 it's in, but absent without leave -- it states, absence 13 without leave charges can be -- can result in 14 disciplinary action up to and including removal from 15 the Postal Service, I think, is the exactly what it 16 says. 17 I read that as absence without leave being a 18 terminable offense. 19 Q You are working the late shift now? 20 A Yes. 21 Q Did you work the late shift last night? 22 A Yes.</p>	160	<p>1 all along. 2 THE COURT: When did you get it? 3 MR. NOBLE: I am -- I am -- I am overwhelmed 4 with paper. I am in the middle of a lawsuit that I've 5 been pursuing for 18 years. 6 THE COURT: Okay. Mr. Noble, that doesn't 7 have anything to do with this. You talked about that 8 at length for hours in prehearing conference with me. 9 That's not what I'm talking about right now. I'm 10 talking about an objection to that particular piece of 11 paper, and I asked you a question, when did you have 12 that piece of -- that document? 13 MR. NOBLE: This document has been on my 14 computer for approximately the last seven months. I 15 found it some time this week. 16 THE COURT: Mr. Furgeson, did you ask for 17 this document during discovery? 18 MR. FURGESON: No, I did not, but, again, it 19 is something that only provides documents that pertain 20 to the notice of charges. It's seems like that was 21 something that would have been extremely proper to give 22 us that and let us know that he sent something in like</p>
159	<p>1 Q How many people got in after 9 o'clock last 2 night? 3 A I don't know the exact number, it was a 4 handful. A handful of carriers returned to the office 5 after 9 o'clock. 6 Q I'm showing you Exhibit AAA. 7 THE COURT: One second, please. 8 While you show it to the witness, you have to 9 let Mr. Furgeson see it. He hasn't seen it yet. 10 MR. NOBLE: How about him? 11 THE COURT: You can show it to him. 12 THE WITNESS: (Examining the document.) 13 MR. FURGESON: Again, a standing objections 14 on this, and this could very well have been -- should 15 have been provided at the get-go because this is 16 something that's directly relevant, and I didn't see a 17 copy of that. 18 THE COURT: Okay. So this is another 19 document that, Mr. Noble, you have had all along and 20 you decided to submit it on the day -- on the eve of 21 the hearing; is that correct? 22 MR. NOBLE: No, Your Honor. I didn't have it</p>	161	<p>1 this. I have not seen it before. I don't know if 2 anybody else has seen it. It's not signed. I don't 3 know if it was e-mailed to somebody or what. 4 You know, again, my objections are noted and 5 I did not ask for it in discovery. 6 THE COURT: Is this AAA or AA? 7 MR. NOBLE: AAA. 8 THE COURT: All right. 9 Let the record reflect, this is a document 10 dated April 30th, 2011 from the Appellant to Mr. French 11 and Mr. Colter with him stating that he received a 12 notice of proposed removal the day before. This is 13 dated April 30th, my goodness. All right. I note the 14 Agency's objection. This should not go in -- under all 15 rights this should not go in. However, yet again, 16 showing you great latitude, Mr. Noble, despite your not 17 following my instructions, I will allow this document 18 in. You may show it to this witness. 19 BY MR. NOBLE: 20 Q Do you recall receiving this document from 21 me? 22 A I don't recall seeing that document, no.</p>

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162	<p>1 MR. NOBLE: That's all I have. 2 THE COURT: Redirect? 3 MR. FURGESON: Yes, sir. 4 REDIRECT EXAMINATION 5 BY MR. FURGESON: 6 Q You're right. You answered questions from 7 Mr. Noble about your being recorded in a conversation 8 he had with you, and is it your testimony that you were 9 not advised that you were being recorded until after 10 your conversation with Mr. Noble? 11 A Correct, it was afterwards, yes. 12 Q Were you aware that you were being recorded? 13 A At the time of the recording, no. 14 Q No. And did you give your consent either 15 after that that it was okay? 16 A No. 17 Q Do you know if Mr. Noble talked about the 18 holiday pay in the examination of you? Do you know if 19 he filed any grievances on that? 20 A I don't know. I remember discussing it with 21 him, but I can't say whether it was in a format of a 22 grievance.</p>	164	<p>1 Q Did he request this route inspection process? 2 A No, not from me. 3 Q Is that actually through the union to do that 4 or do you know? 5 A I'm not sure. I don't know. 6 Q Now, you indicated when he showed you Exhibit 7 F, with all these doctor statements, you remember you 8 testified you had -- you couldn't have see them -- four 9 of them, and the last one you may have seen, but you 10 don't recall. When you instructed him to do overtime, 11 did he offer to show you the exhibits or did he show 12 you those documents? 13 A No. 14 Q Did he mention them; do you recall? 15 A Not that I recall. 16 Q Now, when you issue somebody or a request to 17 come in for a predisciplinary investigation or 18 interview, if they don't come in, are you prohibited 19 from taking disciplinary action? 20 A Prohibited, no. 21 Q Would it be the same if you -- if they came 22 in and they left during the middle of it, would that be</p>
163	<p>1 Q Okay. Mr. Noble asked you about a route 2 examination and you -- a route evaluation or 3 inspection, whatever the term is. What's the right 4 term? 5 A All those terms are actual terms. They mean 6 different things. Evaluation of the street portion of 7 the assignment is, I think, what we were discussing. 8 Q Okay. And did you offer to do that? Is that 9 what your testimony was? 10 A Yeah. I offered to do it, but, again, I 11 would need him to be able to carry it the entire time. 12 Q After you offered to do that, did he follow 13 up? 14 A No. 15 Q Are there any other ways to do route 16 inspections besides just to evaluating or carrier walk 17 around? 18 A Well, it's an actual route inspection. It's 19 a process that takes a week. The mail is counted, 20 physically counted and the delivery street time is 21 evaluated, like I said, for six -- I think it's six 22 days. Maybe five days. And then, you know, compiled.</p>	165	<p>1 the same? Would you be prohibited if they left during 2 the middle of the interview? 3 A No. 4 Q You also mentioned that he didn't work -- he 5 was instructed to work overtime in 2010. Do you recall 6 that question? 7 A Yes. 8 Q And he asked, if he, in fact, did work 9 overtime, and you don't recall if he did or not; is 10 that correct? 11 A I don't recall him ever working over time 12 that day. 13 Q Was he disciplined or penalized in any way 14 for not working overtime? 15 A No. 16 Q Now, you indicated that you had some 17 testimony, a brief testimony about a conversation with 18 Mr. Washington about the removal. Did you in any way 19 try to influence that decision that Mr. Washington 20 would make about Mr. Noble's removal? 21 A No. 22 MR. FURGESON: That's all I have, Your Honor.</p>

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166	1 THE COURT: Recross, Mr. Noble? 2 RECCROSS EXAMINATION 3 BY MR. NOBLE: 4 Q Mr. Furgeson asked you if you would be 5 prohibited from taking disciplinary action without a 6 predisciplinary interview if the employee didn't come 7 to work; is that correct? 8 A I'm not quite sure as to the way you phrased 9 it, but I know -- 10 MR. FURGESON: I object because I did not 11 phrase it that way, no. 12 THE COURT: Objection sustained. That's not 13 how he said it. 14 BY MR. NOBLE: 15 Q Okay. Well, I'm trying to understand, if an 16 employee isn't coming to work may, in your view, 17 management impose discipline upon the employee without 18 conducting a predisciplinary interview? 19 A In my opinion, the employee should be given 20 the opportunity to tell their side of it. And that's 21 the purpose of the predisciplinary interview. 22 Q Have you ever known of a situation in which	168	1 A I don't believe I did, no. 2 Q And the subject of that disciplinary 3 interview was attendance and/or AWOL, wasn't it? 4 A It certainly may have been. It would make 5 sense if it was. I don't recall though if it actually 6 was. 7 MR. NOBLE: That's all. 8 THE COURT: Okay. Mr. French, I want to 9 thank you for your testimony today. I'm going to ask 10 that you not discuss your testimony with anyone until 11 after the close of this hearing. And if you have 12 concerns about when that might be, you can call Mr. 13 Furgeson and ask him. It might be this evening. 14 You are excused from these proceedings. 15 Thank you very much, sir. 16 [The witness was excused.] 17 MR. FURGESON: Your Honor, Mr. Washington, is 18 in the wings. He's my last witness. How do you want 19 to proceed with Mr. Noble? 20 THE COURT: Who are your other witnesses, Mr. 21 Noble? 22 MR. NOBLE: Can you hold on one second.
167	1 an employee was disciplined without conducting a 2 predisciplinary -- without management conducting a 3 predisciplinary interview? 4 A Yes. 5 Q When was that? 6 A I don't have the exact dates, but I can 7 think of two or three instances where I, myself, have 8 issued disciplinary actions to an employee who refused 9 -- they were at work in most instances as I recall, and 10 they refused to appear for a predisciplinary interview. 11 Q So, in those cases, the employee had not -- 12 attend a predisciplinary interview? 13 A Yes. 14 Q And are you aware of any other circumstances 15 under which discipline has been issued to an employee 16 without a predisciplinary interview being conducted? 17 A No. No. 18 Q You conducted a predisciplinary interview 19 with me in November 2010, didn't you? 20 A Yes, I believe I did. 21 Q And after that predisciplinary interview, you 22 didn't issue discipline to me; isn't that correct?	169	1 THE COURT: You have Tucker, Minor and you. 2 MR. NOBLE: Branson is also here. 3 MR. FURGESON: And Toatley. And the other 4 witness, what's his name? 5 MR. NOBLE: Sidhu. 6 MR. FURGESON: Sidhu. 7 MR. NOBLE: I'll go last. Sidhu, Branson, 8 Tucker, Minor. 9 THE COURT: Say the order, again, please, 10 sir? 11 MR. NOBLE: Sidhu, Branson, Tucker, Minor, 12 Toatley, me. 13 MR. FURGESON: I guess it's all right to ask 14 Mr. Sidhu to come up and sit in the wings? 15 And did you want to see if the fax has 16 arrived or did you -- 17 THE COURT: Yes, let's do that. 18 Off the record, yes. 19 (Short recess.) 20 Mr. Noble, I have a copy for you. Mr. Furgeson, I have 21 a copy for you, and I'm retaining a copy. 22 MR. NOBLE: Your Honor, since the Agency has

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170	<p>1 had an opportunity to supplement the record on this 2 point, I'd like the opportunity, as well. 3 THE COURT: Let's go -- we're not on the 4 record. Are we on the record? 5 THE REPORTER: Yes. 6 THE COURT: Okay. I didn't know we were on 7 the record. Okay. 8 No, the only reason I'm -- well, before you 9 do that, Mr. Furgeson, one of the witnesses testified 10 to this ELM provision, the Employee Labor Relations 11 Manual provision. 12 Are you -- what do you want to do with this 13 document? 14 MR. FURGESON: Well, since he referred to it, 15 I think it's worthwhile to show his credibility and 16 whatever -- and to support what he's saying. This is 17 not -- it was improper for him to record the evidence, 18 and so I would move for its admission on that basis. 19 Also, your -- Shorter's testimony just gives 20 further evidence that this was improper. His testimony 21 is there, but I would offer this as corroboration 22 because I have the opportunity to do that.</p>	172	<p>1 Are you Mr. Washington? 2 MR. WASHINGTON: Yes, sir. 3 THE COURT: Mr. Washington, would you please 4 come here up to the witness stand. 5 My name is Daniel Turbitt. I'm the 6 Administrative Judge in these proceedings. Before we 7 proceed with your testimony, I need to ask you whether 8 you have an objection to taking an oath? 9 MR. WASHINGTON: No. 10 THE COURT: Please raise your right hand and 11 repeat after me. State your name, sir? 12 MR. WASHINGTON: I'm Paris Washington. 13 THE COURT: Do you solemnly swear to tell the 14 truth -- 15 MR. WASHINGTON: -- to tell the truth -- 16 THE COURT: -- the whole truth -- 17 MR. WASHINGTON: -- the whole truth -- 18 THE COURT: -- and nothing but the truth -- 19 MR. WASHINGTON: -- and nothing but the truth 20 -- 21 THE COURT: -- so help me God. 22 MR. WASHINGTON: -- so help me God.</p>
171	<p>1 THE COURT: Okay. So are you entering this 2 as Agency Hearing Exhibit 1? 3 MR. FURGESON: No, it's -- well, at the 4 hearing -- Agency Hearing Exhibit 1, yeah, I guess. 5 THE COURT: Okay. 6 Mr. Noble, do you object to this being 7 entered into the record? 8 MR. NOBLE: Yes, your Honor. On it's face, 9 it's inapplicable to the issue we've been discussing. 10 I didn't intercept your wire communications with any 11 other person. 12 THE COURT: Okay. Your objection is noted 13 for the record. I will admit this document as Agency 14 Hearing Exhibit 1. It is admitted over the Appellant's 15 objection. 16 (Agency Hearing Exhibit 17 No. 1 was received in evidence.) 18 THE COURT: The Appellant's request to 19 supplement the record on this is denied. I've allowed 20 him to voice his objection; your voiced verbal 21 objection will be noted for the record. Okay. 22 Let's move on to the next witness.</p>	173	<p>1 X: Thank you, sir. Please be seated. 2 Mr. Ferguson, your witness. 3 WHEREUPON, 4 CURTIS WASHINGTON 5 called as a witness, having been first duly sworn, was 6 examined and testified as follow: 7 DIRECT EXAMINATION 8 BY MR. FURGESON: 9 Q Mr. Washington, can you give us your current 10 position title, and your data? 11 A I'm the manager of Customer Service 12 Operations in the Washington, D.C. Post Office. 13 Q How long have you had that position? 14 A My present position since 2006. 15 Q And, just very briefly, what are your 16 responsibilities in that position? 17 A I oversee station and branches, various 18 stations in the Washington, D.C. Post Office. I 19 supervise managers. 20 Q And would Mr. Colter at Friendship Station, 21 would you be over him? 22 A Yeah. At the time, yes. He was acting</p>

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174	<p>1 manager.</p> <p>2 Q And do you happen to know the Appellant, Mr.</p> <p>3 Noble?</p> <p>4 A No. No.</p> <p>5 Q Have you ever met him?</p> <p>6 A No.</p> <p>7 Q Were you involved in any way with his</p> <p>8 removal?</p> <p>9 A Yes.</p> <p>10 Q And how -- what was your involvement?</p> <p>11 A I made the -- I wrote the decision letter.</p> <p>12 Q Okay. I'd ask you to look in front of you,</p> <p>13 there is a Tab 4B, do you see that designated there?</p> <p>14 A (Examining the document.) Yes.</p> <p>15 Q If you would just look at that document, and</p> <p>16 can you tell me if you've seen this document before?</p> <p>17 A Yes.</p> <p>18 Q Okay. What is this document?</p> <p>19 A It's a notice of proposed removal for David</p> <p>20 W. Noble, Jr.</p> <p>21 Q And upon receiving this document, what did</p> <p>22 you do?</p>	176	<p>1 A To uphold the removal and remove Mr. Noble</p> <p>2 from the Postal Service based on his failure to contact</p> <p>3 me with any information to give me a reason not to go</p> <p>4 forward with removal. I was never contacted. He never</p> <p>5 provided any information to me through written or</p> <p>6 otherwise to indicate why he was failing to be in</p> <p>7 attendance and not be at work. No documentation was</p> <p>8 submitted indicating why he was not at work, and that's</p> <p>9 why I made the decision I made.</p> <p>10 Q Now, this charge against him was for absence</p> <p>11 without leave, AWOL; is that correct?</p> <p>12 A Yes, sir.</p> <p>13 Q And do you consider this a serious charge?</p> <p>14 A Yes.</p> <p>15 Q Why do you consider it serious?</p> <p>16 A Because every employee is responsible to be</p> <p>17 at work, time and attendance, and Mr. Noble had not</p> <p>18 been to work for months, and, to me, that -- for me</p> <p>19 saying that he did not -- he was not interested in</p> <p>20 coming to work, and he made a statement to the manager,</p> <p>21 acting manager originally was Mr. Jones, that when he</p> <p>22 came to his PDI that he was leaving and he wasn't</p>
175	<p>1 A Well, once the supervisor, managing</p> <p>2 supervisor issued the letter of removal, proposed</p> <p>3 removal and they mailed it, they sent me a copy.</p> <p>4 Q And did the Appellant have an opportunity to</p> <p>5 meet with you?</p> <p>6 A Based on the information in the letter of</p> <p>7 removal, proposed removal, he was to notify me, call</p> <p>8 me. I never received a response from Mr. Noble.</p> <p>9 Q Okay. And did you subsequently make a</p> <p>10 decision?</p> <p>11 A Yeah. After a period of time there was no</p> <p>12 contact, and I asked the people -- the manager of the</p> <p>13 station, I actually drafted a letter of decision.</p> <p>14 Q Okay. And would you look at Tab 4A there?</p> <p>15 A (Examining the document.)</p> <p>16 Okay.</p> <p>17 Q And do you recognize that document?</p> <p>18 A Yes, sir.</p> <p>19 Q And what is that document?</p> <p>20 A This is a letter of decision that I wrote</p> <p>21 and mailed to Mr. Noble.</p> <p>22 Q And what was your decision?</p>	177	<p>1 coming back. So he never provided any documentation,</p> <p>2 so to me when you take an oath -- somebody hires you</p> <p>3 for a job, you should come to work. And if you can't</p> <p>4 come to work, there should be something to indicate why</p> <p>5 you can't come to work.</p> <p>6 Q And is there any basis for his absence to --</p> <p>7 well, let me ask you this: Have you ever ran a</p> <p>8 station, been in charge of a station?</p> <p>9 A Yes, I've been a postmaster and manger.</p> <p>10 Q And do you know what, if any, problems this</p> <p>11 might cause operationally for a person not showing up</p> <p>12 for work?</p> <p>13 A Yes, he covered -- well, Mr. Noble was a</p> <p>14 carrier and he has a route, an assignment, and when</p> <p>15 he's not there to cover that assignment, someone else</p> <p>16 has to be utilized to cover that assignment. So you</p> <p>17 can use overtime, you take from one place to have his</p> <p>18 route covered by someone else. It could be covered by</p> <p>19 an additional person you brought or you hire from</p> <p>20 somewhere else or you'll use overtime.</p> <p>21 Q And does this AWOL cause you any issues with</p> <p>22 trust and confidence in his abilities to do his job for</p>

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178	<p>1 the Postal Service?</p> <p>2 A Again, you know, you take a job, you</p> <p>3 volunteer to take a job and you should be at work. And</p> <p>4 if you don't come to work and you intentionally do not</p> <p>5 come to work and provide nothing -- no documentation to</p> <p>6 indicate your inability to come to work, yes.</p> <p>7 Q Is this a serious charge just for letter</p> <p>8 carriers or for any other position in the Postal</p> <p>9 Service?</p> <p>10 A All employees.</p> <p>11 Q Do you believe the Appellant understood the</p> <p>12 importance of being in regular attendance?</p> <p>13 A I do.</p> <p>14 Q Why is that?</p> <p>15 A Every employee -- he's been in the Postal</p> <p>16 Service for a number of years, he would know the</p> <p>17 importance of coming to work.</p> <p>18 Now, in reviewing it, did you consider the</p> <p>19 fact that the Appellant, there was no cited discipline</p> <p>20 in his record and that he had several years of service</p> <p>21 in your consideration of the decision to remove him?</p> <p>22 A Yes. But because Mr. Noble never contacted</p>	180	<p>1 removed from the Postal Service, and, unfortunately,</p> <p>2 some of them never even contacted the Postal Service.</p> <p>3 Others who were put up for removal, contacted me</p> <p>4 themselves or through their representatives and we met</p> <p>5 and had the discussion based on the information they</p> <p>6 provided to me. Some I agreed to what we call last</p> <p>7 chance agreements, some may have been reduced for</p> <p>8 lesser actions, administrative actions, so I've had</p> <p>9 similar -- I've had many situations like this with our</p> <p>10 craft employees.</p> <p>11 Q And do you know if they come to me with your</p> <p>12 other -- there have been times when you go ahead and</p> <p>13 sustain the removal?</p> <p>14 A Yes.</p> <p>15 Q At your decision-making process, did you</p> <p>16 consider any viable alternative other than removal for</p> <p>17 Mr. Noble under the circumstances?</p> <p>18 A No. He never gave me an opportunity to</p> <p>19 consider any.</p> <p>20 MR. FURGESON: I'll pass the witness.</p> <p>21 THE COURT: Mr. Noble?</p> <p>22 CROSS EXAMINATION</p>
179	<p>1 me and never provided any document, and because he had</p> <p>2 been AWOL for such a long period of time, I decided to</p> <p>3 uphold the removal.</p> <p>4 Q Now, other than the charge and the facts that</p> <p>5 were cited in the notice of proposed removal, did you</p> <p>6 consider any other factors or elements that were not</p> <p>7 otherwise referenced in the notice of proposed removal</p> <p>8 before taking -- making your decision to remove him?</p> <p>9 A No, because he did not provide me any</p> <p>10 opportunity to discuss his reasoning for not being at</p> <p>11 work, so, therefore, I went with what I had.</p> <p>12 Q Did anyone else say -- contact you to</p> <p>13 influence your decision to remove him?</p> <p>14 A No.</p> <p>15 Q Have you issued or decided removal cases for</p> <p>16 other employees that have had AWOL charges against</p> <p>17 them?</p> <p>18 A Many.</p> <p>19 Q And how do these employees compare with the</p> <p>20 removal of Mr. Noble?</p> <p>21 A I've had several similar to Mr. Noble's case</p> <p>22 who never contacted me, and those individuals were</p>	181	<p>1 BY MR. NOBLE:</p> <p>2 Q How long have you been working at the job</p> <p>3 that has Zone 16 included within your responsibilities?</p> <p>4 A Since January of this year.</p> <p>5 Q January of 2011?</p> <p>6 A Correct.</p> <p>7 Q And immediately before that, you were doing</p> <p>8 what?</p> <p>9 A Managing customer service for other stations</p> <p>10 and branches within Washington, D.C.</p> <p>11 Q So this same job you have now but with</p> <p>12 different zones?</p> <p>13 A Yes.</p> <p>14 Q I understand that it was your testimony that</p> <p>15 you understood that I said, as I was leaving the PDI,</p> <p>16 that I was leaving and not coming back?</p> <p>17 A Yeah. For some reason you stated that --</p> <p>18 and it's written in your documentation that you were</p> <p>19 not coming back until you were paid, something to that</p> <p>20 effect.</p> <p>21 Q Do you know what I hadn't been paid at that</p> <p>22 point, if anything?</p>

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182	1 A Not other than -- no. There was some 2 question about some leave. 3 Q Well, did you ask anybody about that? 4 A Yes. The manager -- acting manager said he 5 was going to process an adjustment for whatever leave 6 was in question. 7 Q Let's assume that I -- let's assume that a 8 employee submits a leave request and for some reason it 9 doesn't get processed during that pay period, is 10 there any reason that management couldn't contact the 11 employee and say, "We missed this pay period. Why 12 don't you fill out a new 3971 and we'll get you paid 13 next week?" 14 A If that manager or supervisor was 15 knowledgeable of that, yes. 16 Q That would be a lot faster procedure, 17 wouldn't it, then putting in a pay adjustment? 18 A Correct. 19 Q Mr. Furgeson asked you about the question of 20 trust and confidence. Do you recall that question? 21 A Yes. 22 Q Has any other member of management or	184	1 A I don't know of any other opportunity we 2 give to employees other than through a PDI unless the 3 employee personally contacts his or her manager or his 4 or her representative through the union and a 5 discussion is held that way. But a PDI is the way that 6 we obtain information from any employee for any 7 infraction. 8 Q And is it your position that if the employee 9 for whom disciplinary action has been proposed doesn't 10 contact the deciding official, that the deciding 11 official has no responsibility to conduct an 12 investigation of the circumstances surrounding the 13 discipline? 14 A No. I've never done that for anyone else. 15 Q I'm sorry? 16 A I said, no, and I've never done that for 17 anyone else. 18 THE COURT: And just to be clear, when you 19 say, "No," you mean no, you've never -- 20 THE WITNESS: No. No. 21 X: -- conducted an investigation 22 yourself when employee didn't contact you --
183	1 supervision expressed an opinion about their trust and 2 confidence in me? 3 A No, not to my knowledge. 4 Q Are you aware of a letter that I wrote to 5 Tony Jones in February 2011 in which I told him that I 6 considered myself to be constructively suspended from 7 my job as a letter carrier? 8 A (No verbal response.) 9 Q And did I understand correctly that you 10 testified that you made the decision to remove "based 11 on my failure to contact you"? 12 A And provide any documentation to 13 substantiate your reason for not being at work. 14 Q Is it your position that management need not 15 investigate before issuing discipline to an employee? 16 A When you say investigate, investigate what? 17 Q The circumstances surrounding the discipline. 18 A Well, the PDI gave you an opportunity to 19 provide that information. 20 Q And if there -- if there -- if there were no 21 PDI, would I have been given the benefit of any other 22 investigation?	185	1 THE WITNESS: No. 2 THE COURT: -- is that what you mean by no? 3 THE WITNESS: Correct. I've not done that 4 with anyone else. 5 BY MR. NOBLE: 6 Q Did you write the decision letter yourself? 7 A Yes, sir. 8 Q I'm sorry, have you been an employee of the 9 D.C. Post Office throughout your career? 10 A No. No. 11 Q When did you become an employee of the D.C. 12 Post Office? 13 A Right after anthrax 2000 -- when was that -- 14 I came there, I think, it was 2004. 15 Q Did you hear anything about 20 or so letter 16 carriers in Friendship Station being charged with time 17 card fraud? 18 A Yeah, I heard something about that. 19 Q And do you know what ultimately happened to 20 those employees? 21 A No. No. I know that there was some 22 discussion about the investigation with the Inspection

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186	<p>1 Service, but I cannot tell you who they were and what 2 happened with those individuals. 3 Q Would you consider time card fraud to be a 4 more serious infraction or a less serious infraction 5 than AWOL? 6 Q Both of them have their levels of severity 7 and depending on the outcome of the investigation with 8 the Inspection Service, they would determine whether or 9 not those individuals with time card fraud was actually 10 guilty of time card fraud, and I can't tell you what 11 that investigation produced. 12 Q Now, in the decision letter, you mentioned 13 something called the Douglas factor, correct? 14 A Correct. They're -- they're listed. 15 Q Do you have the document there before you? 16 A I can't tell you, I haven't looked through 17 this documentation. 18 Q Okay. 19 MR. NOBLE: Steve can -- 20 THE COURT: Do you want him to look at the 21 decision letter or do you want -- 22 MR. NOBLE: Yes.</p>	188	<p>1 out by the Labor Relations Department to management at 2 various times. Throughout my Postal career I've seen 3 them. 4 Q About how many Douglas factors are there? 5 A I can't remember. Eleven. I can't remember 6 exactly how many. 7 Q Did you consider all of the Douglas factors? 8 A I would have to see them in front of me to 9 know whether or not I did or not. I can't tell you 10 because I don't have them in front of me. 11 Mainly what I considered was the fact that 12 you did not come to work; you were not at work; you did 13 not contact me. That was the reason for my decision. 14 A person who doesn't come to work for months with no 15 documentation to indicate why you're not at work, 16 that's all I needed. 17 Q In the second paragraph, you say, "In 18 reaching this decision, I've considered the elements of 19 the charges cited in the notice dated April 28th, 20 2011." Do you see that sentence? 21 A Yes. 22 Q What do you understand the elements of the</p>
187	<p>1 THE COURT: Tab 4A, sir. 2 THE WITNESS: Okay. I haven't seen it yet. 3 I have a copy of this, but I haven't seen it yet. 4 BY MR. NOBLE: 5 Q You do have a copy of it there or you don't 6 have a copy? 7 A I do. I do. 8 Q Okay, great. 9 What is a Douglas factor? 10 A You are to take these into consideration 11 when you are deciding on discipline for individuals, 12 carriers, clerks, mail handlers, whatever employee in 13 the Postal Service. And once you look at all these 14 things, then you make your determination. 15 Q And do you know where the term "Douglas 16 factor" gets its name? 17 A No, I don't. 18 Q Have you ever seen a list of Douglas factors? 19 A Yes. 20 Q Where -- where have you seen such a list? 21 A Other disciplinary actions, I've received 22 from the Labor Relations Department, and they were sent</p>	189	<p>1 charges cited in the April 28th notice to be? 2 A If you are a failure to be regular in 3 attendance, you have been AWOL for a specific period of 4 time, and you have not provided any documentation to 5 make us aware of any factors that would justify not 6 moving forward with the removal. 7 Q And you say that on the second page on 8 paragraph No. 4 -- 9 A Uh-huh. 10 Q -- you say that you considered my discipline 11 history. Do you see where it says that? 12 A Uh-huh. 13 Q What did you understand my discipline history 14 to be? 15 A At that particular point, I didn't know what 16 your discipline history was. My decision was based on 17 the fact that you did not come to work, had not been at 18 work, and made no provisions to come back to work. 19 Q Okay. So it was your understanding that I 20 had an unblemished disciplinary record; is that 21 correct? 22 A No, I can't say that because I did not know</p>

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190	<p>1 what your record was previously.</p> <p>2 Q Also, in paragraph No. 4, it says that you</p> <p>3 considered my 33 years with the Postal Service. Do you</p> <p>4 see where it says that?</p> <p>5 A Uh-huh.</p> <p>6 Q And that you thought that 33 years was</p> <p>7 insufficient to mitigate the penalty of removal; is</p> <p>8 that correct?</p> <p>9 A No. My opinion, a person who has 33 years</p> <p>10 of Postal Service would do everything necessary to make</p> <p>11 everyone aware as to why that individual cannot be at</p> <p>12 work because they would value that 33 years. And not</p> <p>13 contacting me, not providing any information to me as</p> <p>14 to why you were not at work and why you could not come</p> <p>15 to work, I didn't consider that you thought that 33</p> <p>16 years was important to enough to do everything</p> <p>17 necessary to contact me or anyone else who may be out</p> <p>18 there at this particular point or junction right now.</p> <p>19 Q Okay. So do I understand that you thought</p> <p>20 that 33 years was not long enough to mitigate the</p> <p>21 penalty of removal?</p> <p>22 A No. Again, like I said, because of your</p>	192	<p>1 because they will do everything necessary to try to</p> <p>2 avoid being removed from the Postal Service. That is</p> <p>3 not my call, that's the individual's call who has been</p> <p>4 AWOL and against whom the removal has been issued.</p> <p>5 Q In paragraph 3 on the second page, you list</p> <p>6 clarity of the rules violations in bold as being one of</p> <p>7 the -- one of the things you considered, correct?</p> <p>8 A Yes, that's a -- all those statements are</p> <p>9 bold because that's the way they are written, and, so,</p> <p>10 yes.</p> <p>11 Q Okay. And is it your understanding that</p> <p>12 clarity of the rules violations is one of the Douglas</p> <p>13 factors?</p> <p>14 A I'm not sure at this time. I wouldn't say</p> <p>15 that. I'm not sure.</p> <p>16 Q Do you know whether I have ever been warned</p> <p>17 that I could be disciplined for being AWOL?</p> <p>18 A I would think that when you came in for your</p> <p>19 PDI or any other time in the Postal Service, if you</p> <p>20 ever were AWOL before, that you would have been warned</p> <p>21 for that. I would think that would be something that</p> <p>22 you would know as a person who has been in the Postal</p>
191	<p>1 failure to respond, I did not think you considered your</p> <p>2 33 years of importance and value enough -- valuable</p> <p>3 enough to contact me or provide any additional -- or</p> <p>4 any documentation to indicate why you were not at work.</p> <p>5 That's all I could go on.</p> <p>6 Q Okay. I'm going to ask that you answer this</p> <p>7 yes or no. Is it correct that you thought that 33</p> <p>8 years was not long enough to mitigate the penalty of</p> <p>9 removal?</p> <p>10 A Again, I felt 33 years is important in my</p> <p>11 eyes, but for an individual who has been AWOL and out</p> <p>12 of work as long you had been, and made no provisions or</p> <p>13 any provisions at all to contact me or anyone else on</p> <p>14 your behalf, you did not consider those 33 years</p> <p>15 valuable and important, so, therefore, I made my</p> <p>16 decision.</p> <p>17 Q Is there any amount of time in the Postal</p> <p>18 Service that you would have considered long enough to</p> <p>19 mitigate the penalty of removal?</p> <p>20 A It's based on the circumstances. Each</p> <p>21 person is different. To me, I considered the</p> <p>22 individual makes that decision if it's important</p>	193	<p>1 Service 33 years that if you don't come to work, you</p> <p>2 will be AWOL and could be removed from the Postal</p> <p>3 Service. Every employee in the Postal Service is made</p> <p>4 aware of that throughout their -- when they're hired,</p> <p>5 throughout the time they're in the Postal Service for</p> <p>6 any other reason, that's something that every employee</p> <p>7 knows that I have ever supervised or been under my</p> <p>8 charge.</p> <p>9 Q Are you familiar with the term "progressive</p> <p>10 discipline?"</p> <p>11 A Yes.</p> <p>12 Q What do you understand that term to mean?</p> <p>13 A That means a person is disciplined in a</p> <p>14 progressive manner as they, the individual or their</p> <p>15 representative meets with the person who issued the</p> <p>16 discipline, and depending on the gravity of the</p> <p>17 discipline -- I'm sorry, of the infraction, that</p> <p>18 manager or supervisor could have issued a lesser</p> <p>19 penalty other than removal or 7-day, 14-day or a letter</p> <p>20 of warning.</p> <p>21 Q In discovery in this case, I asked the Postal</p> <p>22 Service to provide a list of employees who had been</p>

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194	<p>1 given lesser discipline than removal for being AWOL. 2 Have you seen that list? 3 A Yes. 4 Q You have? 5 A Uh-huh. 6 MR. FURGESON: I'm just going to object. It 7 was not just for AWOL, but was for unsatisfactory 8 attendance and that's the way it was requested. 9 THE COURT: Objection sustained. 10 BY MR. NOBLE: 11 Q The list the Postal Service provided in 12 response to Interrogatory No. 2 showed the Postal 13 Service shared with them within a year's period issued 14 a couple of hundred letters of warning, 7-day 15 suspensions and 14- day suspensions for the same 16 offense with which I was charged, correct? 17 A I don't know. 18 MR. FURGESON: Objection. 19 THE COURT: Before you answer, what's the 20 objection? 21 MR. FURGESON: I don't think it -- it's not 22 that specific as the same offense that I was charged,</p>	196	<p>1 A Correct. 2 Q And they were given lesser discipline as part 3 of a progressive discipline regime, correct? 4 A I would think so, but I can't be absolutely 5 sure. 6 Q A letter of warning, 7-day suspension and 14- 7 day suspension are the disciplinary actions short of 8 removal the Postal Service typically issues; isn't that 9 true? 10 A That's based on negotiation with the union 11 rep when they meet to discuss that particular 12 grievance, and they make a decision of whether or not 13 to reduce it or sustain it. 14 Q Okay. But those three actions, letter of 15 warning, 7-day suspension and 14-day suspension -- 16 THE COURT: Will the Agency stipulate that 17 those disciplines are less than removal action? 18 MR. FURGESON: We will stipulate that they 19 are less than a removal action, but will not stipulate 20 that they are the exact same -- 21 THE COURT: No, just those particular -- 22 those four disciplinary actions are less than a</p>
195	<p>1 meaning Mr. Noble. I don't think it boils down just to 2 AWOL. 3 THE COURT: Objection sustained. You can 4 rephrase the question. Do you want to rephrase the 5 question, Mr. Noble? 6 MR. NOBLE: I'm trying, Your Honor. 7 THE COURT: Okay. 8 BY MR. NOBLE: 9 Q I was charged with failure to be regularly in 10 attendance/AWOL, correct? 11 THE COURT: Do you recall, sir? 12 THE WITNESS: Oh, yes, I'm sorry. 13 BY MR. NOBLE: 14 Q Your answer was yes. Okay. And the list the 15 Postal Service provided me in response to Interrogatory 16 No. 2 with a list of employees who had been charged 17 with the same offense with which I had been charged, 18 correct? 19 A Correct. 20 Q And there were a couple hundred employees on 21 that list who had been given letters of warning, seven- 22 day suspensions and 14-day suspensions, correct?</p>	197	<p>1 removal? 2 MR. FURGESON: Right. 3 THE COURT: You may continue. The Agency 4 stipulated the basis of that question. 5 BY MR. NOBLE: 6 Q And the 7-day suspension and the 14-day 7 suspensions the Postal Service issues are paper 8 suspensions, correct? 9 A Sometimes. Sometimes the union -- when 10 they're negotiating with the union, they may settle on 11 time served. They may actually serve time. 12 Q Okay. But where the -- where the Postal 13 Service initially issues discipline, it issues it -- it 14 issues 7-day suspensions and 14-day suspensions as 15 paper suspensions, correct? 16 A Correct. 17 Q And a 14-day suspension is ordinarily the 18 largest discipline the Postal Service imposes short of 19 removal; isn't that correct? 20 A Correct. 21 Q Are there a lot of unfair labor practice 22 charges filed in your area?</p>

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198	<p>1 MR. FURGESON: Objection. This seems so far 2 afield. I mean, your area, and no idea whether -- 3 THE COURT: Objection sustained. 4 BY MR. NOBLE: 5 Q Is it unusual in your area for a single work 6 location to have four NLRB postings for one person in a 7 two-year period? 8 MR. FURGESON: Objection. I'm not sure of 9 the relevance of this either. It's just, you know, 10 unfair labor practice charges can be for anything. 11 THE COURT: Would the Agency stipulate that 12 Mr. Noble has filed unfair labor practices, that he's 13 filed grievances. I mean, basically, the premise of 14 all this, Mr. Noble, is that you have been the subject 15 of an intolerable working conditions and you are laying 16 the foundation for that premise, one of them is that 17 you have had to file grievances and unfair labor 18 practices based on the Agency's not treating you 19 fairly. 20 Will the Agency stipulate that Mr. Noble has 21 indeed filed unfair labor practices and grievances? 22 MR. FURGESON: I know he's filed unfair labor</p>	200	<p>1 A I'm not familiar with any situation like 2 that. 3 Q So, then, is it your answer that it would be 4 unusual? 5 A I guess. I'm not absolutely sure. I don't 6 know if it's been done in any other areas. I'm not 7 sure. 8 Q How was it determined that you would be the 9 deciding official? 10 A Because I was the manager of the manager in 11 that particular facility, Friendship. 12 Q So within the Washington, D.C. Post Office, 13 whoever is the third-level manager is the deciding 14 official in cases that are appealed to MSPB or 15 appealable to MSPB; is that correct? 16 A I am the manager responsible for the manager 17 in that office and I'm the Step 2 designee, that's what 18 I was going to tell you. I'm the Step 2 designee, and 19 all appeals come to me for discipline in my area. 20 Q Okay. As the Step 2 designee, have you seen 21 any grievances from me? 22 A No.</p>
199	<p>1 practices -- grievances -- 2 THE COURT: Well, the union has filed on his 3 behalf. 4 MR. FURGESON: -- and it's over a period of 5 several years, I know he's done that, but I don't know 6 if he's done anything recently as far as grievances. 7 THE COURT: There are court records as to 8 that effect as well. I mean. 9 MR. FURGESON: Unfair labor practices he's 10 filed them, yes. 11 THE COURT: Okay. So we have a stipulation 12 as to that. But now you're going to the frequency. 13 MR. NOBLE: Well, I'm trying to establish 14 unusual job tensions, Your Honor. 15 THE COURT: All right. I'll allow the 16 question. Go ahead. Why don't you restate the 17 question for the witness? 18 Objection overruled. 19 BY MR. NOBLE: 20 Q Is it unusual, in your experience, to have 21 four NLRB postings in one work location for one 22 employee in a two-year period?</p>	201	<p>1 Q How long did you consider whether to uphold 2 the removal? 3 A I would think -- I can't remember exactly 4 how long it took, but I didn't respond to your 5 nonresponse immediately. It took a while and I went to 6 Labor and asked if they heard -- had they heard 7 anything regarding -- anything from you as far as 8 documentation. And they said, no, and that's when I 9 proceeded to write the letter of decision. It wasn't 10 immediately. I could have written it sooner than I 11 did, but I didn't. 12 Q And can you describe the interior dialogue in 13 your mind as you were considering whether I should be 14 removed? 15 A No. The only thing I can say, again, I've 16 had similar cases where people have been AWOL and not 17 come to work or respond. In my mind, your nonresponse 18 to me was that you didn't value your job and I 19 proceeded with my letter of decision. 20 Q So with -- with those factors that I didn't 21 respond and that I had been AWOL, that's what you 22 weighed when you were considering whether to remove me;</p>

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202	1 is that correct? 2 A Yes. I had no other information. 3 THE COURT: Do you have any further 4 questions of this witness, Mr. Noble? 5 MR. NOBLE: I'm trying to nail it down here. 6 (Short pause.) 7 MR. NOBLE: Okay. That's it for me. 8 MR. FURGESON: No further questions. 9 THE COURT: Okay. I want to thank you for 10 your testimony today, Mr. Washington. I am going to 11 ask that you not discuss your testimony with anyone 12 until the close of this hearing. We don't know when 13 tht will be, but if you have questions about that, talk 14 to Mr. Furgeson and find out. It may be this evening. 15 You have a good weekend. You are excused 16 from this proceeding. Thank you. 17 THE WITNESS: Thank you. 18 (The witness was excused.) 19 MR. FURGESON: That is the Agency's 20 witnesses. 21 THE COURT: Okay. 22 The Appellant's first witness?
203	1 MR. NOBLE: I'm sorry? 2 THE COURT: Your first witness, sir. 3 MR. NOBLE: Nirlep Sidhu. 4 THE COURT: Okay. 5 Good afternoon, sir. My name is Judge 6 Turbitt. Thank you for coming today. 7 Before we proceed with your testimony, sir, I 8 need to ask you whether you have an objection to taking 9 an oath? 10 MR. SIDHU: No, I don't have no objection. 11 THE COURT: Okay. Could I ask you to kindly 12 stand, please, raise your right hand and repeat after 13 me. I, state your name, sir. 14 MR. SIDHU: I, Nirlep Sidhu -- 15 THE COURT: Do solemnly swear -- 16 MR. SIDHU: -- do solemnly swear -- 17 THE COURT: -- to tell the truth -- 18 MR. SIDHU: -- to tell the truth -- 19 THE COURT: -- the whole truth -- 20 MR. SIDHU: -- the whole truth -- 21 THE COURT: -- and nothing but the truth -- 22 MR. SIDHU: -- nothing but the truth --
204	1 THE COURT: -- so help me God. 2 MR. SIDHU: -- so help me God. 3 THE COURT: Thank you, sir. Please be 4 seated. 5 Okay, Mr. Noble, your witness. 6 WHEREUPON, 7 NIRLEP SIDHU 8 called as a witness, having been first duly sworn, was 9 examined and testified as follows: 10 DIRECT EXAMINATION 11 BY MR. NOBLE: 12 Q Mr. Sidhu, you were a letter carrier, 13 correct? 14 A Yes. 15 Q And you work in Zone 16 in Washington, D.C.; 16 is that correct? 17 A Yes. 18 Q I called you about 8:45 last night, didn't I? 19 A Yes. 20 Q And what were you doing at 8:45 last night? 21 A When you called, I just parked my truck. I 22 was going to go, you know, unload my stuff. So I just
205	1 told, you can you wait 10 minutes and I will call you 2 back. 3 Q So you were working as a letter carrier at 4 8:45 last night? 5 A Yes. 6 Q And you started work at 8 o'clock yesterday 7 morning; is that correct? 8 A Yes. 9 Q And when you came back from working at about 10 8:45 last night, were there other carriers who had 11 still not returned to the station? 12 A Yes. There are a lot of carriers out there. 13 Q On July 29th, 2010, did you see Sterling 14 Colter -- see and hear Sterling Colter saying anything 15 to me? 16 A At the time, maybe five or seven minutes in 17 the morning, you tell the time, I don't know -- but in 18 the morning within five minutes or seven minutes like 19 that, Mr. Noble and Sterling Colter were standing over 20 there and Sterling Colter was saying, "Noble, get out 21 from here." So I looked back, I said what was going 22 on. So I walked over there where they both were. He

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206	<p>1 started going to his cage where the letter carrier cage 2 is to get his stuff. So, he said, "Noble, where are 3 you going?" So he said, you know, "Let me get my 4 stuff." I think it was his hat or something like tht." 5 He said, "Go this way. Get out from here." So he went 6 to his cage, he took his hat, and he started walking 7 with him, you know, pointing, something like that. 8 "Get out from here." So I walked behind him, you know, 9 went outside the door. I asked him if he's feeling 10 better, you know, if he can drove home. So he said, you 11 know, "He brought his car; he can drive home." So I 12 went back -- went back to work. 13 Q And did you testify -- you testified about 14 this incident between Sterling Colter and me at an NRLB 15 hearing on July 21st this year? 16 A Yeah, I did testify. 17 MR. NOBLE: I have no further questions. 18 CROSS EXAMINATION 19 BY MR. FURGESON: 20 Q Mr. Sidhu -- 21 A Yes, sir. 22 Q -- you indicated you heard Mr. Colter say get</p>	208	<p>1 THE COURT: Mr. Sidhu, I want to thank you for 2 your testimony today. 3 THE WITNESS: You're welcome, sir. 4 THE COURT: I want to ask that that you not 5 discuss your testimony with anyone until the close of 6 this hearing. 7 THE WITNESS: Okay. 8 THE COURT: If you are not sure when that is, 9 talk to Mr. Noble and ask him when. It may be tonight, 10 but we're not sure. 11 THE WITNESS: Okay. 12 THE COURT: But you are excused from these 13 proceedings. Thank you very much. 14 MR. NOBLE: May Mr. Sidhu remain in the 15 hearing room? 16 THE COURT: Is there an objection? 17 MR. FURGESON: I don't have an objection as 18 long as he's not going to be called back. I think 19 somebody -- to keep the thing rolling, we have to have 20 somebody else go down and bring in your next witness. 21 (The witness was excused.) 22 THE COURT: Okay. Do you know who your next</p>
207	<p>1 out from here to Mr. Noble? 2 A He said several times, not once. 3 Q And did you hear the conversation prior to 4 that? 5 A No. I was only here part of the time. I 6 took my attention when he got loud and he said, "Get 7 out from here," that's the only time, you know, I took 8 my attention. I turned around and said, what's going 9 on. I walked, you know, towards them, and then he was 10 like a little bit scared so he told Noble, "The door is 11 this way." 12 Q And did you talk to Mr. Noble about what had 13 transpired prior to him being instructed to leave? 14 A No, I didn't ask him. The only thing I 15 asked him, are you feeling better or, you know, you can 16 drive home. So sometimes he drives home, sometimes he 17 takes Metro, you know. So I said, you can drive home. 18 So, he said, you know, "I brought a car today, I can 19 drive home." 20 MR. FURGESON: That's all I have. 21 THE COURT: Anything else, sir? 22 MR. NOBLE: No further questions.</p>	209	<p>1 witness is? 2 MR. NOBLE: Branson. 3 THE COURT: Let me tell you what we said 4 before. He said -- I believe you said after this 5 Branson, and then after Branson, I believe you said was 6 Tucker. 7 MR. NOBLE: Tell them to wait outside. 8 THE COURT: Good afternoon. Are you Mr. 9 Branson? 10 MR. BRANSON: Yes. 11 THE COURT: Hi, Mr. Branson, my name is Judge 12 Turbitt. I want to thank you for coming this evening. 13 Before we hear your testimony, I need to ask you 14 whether you have any objection to taking an oath? 15 MR. BRANSON: No, I don't. 16 THE COURT: Would you kindly stand, please, 17 and raise your right hand and repeat after me. I -- 18 state your name, sir. 19 MR. BRANSON: I, Alton Ronald Branson -- 20 THE COURT: -- do solemnly swear -- 21 MR. BRANSON: -- do solemnly swear -- 22 THE COURT: -- to tell the truth --</p>

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210	1 MR. BRANSON: -- to tell the truth -- 2 THE COURT: -- the whole truth -- 3 MR. BRANSON: -- the whole truth -- 4 THE COURT: -- and nothing but the truth -- 5 MR. BRANSON: -- and nothing but the truth -- 6 THE COURT: -- sO help me God. 7 MR. BRANSON: -- so help me God. 8 THE COURT: Thank you, sir. Please have a 9 seat. 10 Mr. Noble, your witness. 11 WHEREUPON, 12 ALTON RONALD BRANSON 13 called as a witness, having been first duly sworn, was 14 examined and testified as follows: 15 DIRECT EXAMINATION 16 BY MR. NOBLE: 17 Q You were a letter carrier employee of the 18 United States Postal Service, correct? 19 A Yes, sir. 20 Q And you're presently on leave from work as a 21 letter carrier, correct? 22 A Yes.	212	1 A Right. On the dispute resolution process. 2 Q Right. And that's the last step of the 3 grievance procedure before arbitration, correct? 4 A That's correct. 5 Q And being a Step B representative was a full- 6 time position, wasn't it? 7 A Yes. 8 Q So while you held that position, you were 9 discussing grievances every day, correct? 10 A Yes. I had a management counterpart where 11 we represented three districts, Baltimore District, 12 Cap-Metro District and Northern Virginia District, and 13 the task was resolving grievances at that level in all 14 three districts. 15 Q And in your 36 years of experience, has it 16 been your experience that Postal management uses 17 progressive discipline to address issues of AWOL? 18 A Yes. Under Article 16 under the Just Cause 19 Provisions, normally it's official discussion, letter 20 of warning, 7-day, 14-day, there's a progression. 21 Q And are you aware of any case in which the 22 Postal Service has removed a letter carrier with 30 or
211	1 Q And the reason for that leave is? 2 A I'm now branch president of Capitol Branch 3 142, the National Association of Letter Carriers. 4 Q And Branch 142 is the local affiliate of the 5 National Association of Letter Carriers, correct? 6 A That's correct. 7 Q And for how long have you been an employee of 8 the Postal Service? 9 A Thirty-six years. 10 Q And for how long have you been a union 11 representative? 12 A Probably 33 of the 36 years. 13 Q And immediately before -- excuse me. For how 14 long have you been the branch president? 15 A It will be three years in January of 2012. 16 Q And immediately before becoming branch 17 president, what position did you hold with the union? 18 A I was a Step B representative for the 19 dispute resolution process, which is an alternative 20 process to the grievance procedure. 21 Q And Step B is the third step of the grievance 22 procedure; is that correct?	213	1 more years of service and an unblemished disciplinary 2 record without first resorting to progressive 3 discipline? 4 A If I understand your -- can I repeat his 5 question to make sure I understand it. 6 THE COURT: You can't -- you can repeat it so 7 that you understand it. And if that's not what he 8 said, then Mr. Noble will rephrase. Go ahead. What is 9 your understanding of what he just said? 10 THE WITNESS: My understanding is where 11 management has issued somebody a removal without going 12 through the progressive steps. 13 BY MR. NOBLE: 14 Q And the employee has 30 or more years of 15 service and has an unblemished disciplinary record? 16 A Right. None that I know of. 17 MR. NOBLE: That's it for this witness. 18 THE COURT: Mr. Furgeson? 19 MR. FURGESON: Yes. 20 CROSS EXAMINATION 21 BY MR. FURGESON: 22 Q Are you saying, Mr. Branson, that you've

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<p style="text-align: right;">214</p> <p>1 never seen a removal of an employee without progressive 2 discipline for any offense in the Postal Service? 3 A No. I think the question was for AWOL. 4 Q Well, I'm just asking you. 5 A There have been where an offense may be 6 egregiuos like disgrading mail, throwing away mail, 7 stealing, situations regarding injury comp fraud, those 8 situations, yes. 9 Q Has there ever been a situation that a person 10 maybe was AWOL for several months and removed without 11 it going through progressive steps of discipline? 12 A None that I'm aware of. 13 MR. FURGESON: That's all I have, Your Honor 14 THE COURT: Okay. Mr. Branson, we thank you 15 for your testimony today. I'm going to ask that you 16 not discuss your testimony with anyone until after the 17 close of this hearing. If you're not sure when that 18 is, then give Mr. Noble a call and he'll let you know. 19 It may be this evening, but we're not sure. Okay. You 20 are excused from these proceedings. Thank you very 21 much. 22 THE WITNESS: Okay. So do you want me to</p>	<p style="text-align: right;">216</p> <p>1 MR. TUCKER: -- to tell the truth -- 2 THE COURT: -- the whole truth -- 3 MR. TUCKER: -- the whole truth -- 4 THE COURT: -- and nothing but the truth -- 5 MR. TUCKER: -- and nothing but the truth -- 6 THE COURT: -- so held me God. 7 MR. TUCKER: -- so help me God. 8 THE COURT: Thank you, sir. Please be 9 seated. 10 MR. TUCKER: Thank you. 11 THE COURT: I notice something is in your ear 12 -- 13 THE WITNESS: Yes, that's my B2. It's not 14 on. 15 THE COURT: Okay. 16 THE WITNESS: I just turned it off. 17 THE COURT: All right. It sounds good. I 18 didn't know if you needed it to hear or -- 19 THE WITNESS: On, no, no. I can hear. 20 THE COURT: I was going to ask them to speak 21 louder for you. Okay. Please go ahead. 22 WHEREUPON,</p>
<p style="text-align: right;">215</p> <p>1 stay until we finish today? 2 THE COURT: No, you can go. 3 THE WITNESS: Okay. 4 THE COURT: Thank you so much. 5 THE WITNESS: Thank you. 6 (The witness was excused.) 7 THE COURT: Then Mr. Minor -- we have Louis 8 Minor after Mr. Tucker. 9 Yes, sir, are you Leon Tucker? 10 MR. TUCKER: Yes, I am. 11 THE COURT: Hi, Mr. Tucker. My name is Judge 12 Turbitt. Thank you for coming today. Why don't you 13 stand up here, please. Before we proceed with your 14 testimony, I need to ask you whether you have an 15 objection to taking an oath? 16 MR. TUCKER: No. 17 THE COURT: Okay. Please raise your right 18 hand and repeat after me. I -- state your name -- 19 MR. TUCKER: I, Leon Tucker -- 20 THE COURT: -- do solemnly swear -- 21 MR. TUCKER: -- do solemnly swear -- 22 THE COURT: -- to tell the truth --</p>	<p style="text-align: right;">217</p> <p>1 LEON TUCKER 2 Called as a witness, having been first duly sworn, was 3 examined and testified as follows: 4 DIRECT EXAMINATION 5 BY MR. NOBLE: 6 Q Mr. Tucker, you were a letter carrier 7 employee of the United States Postal Service, correct? 8 A Yes. 9 Q And how long have you been so employed? 10 A Thirty-seven years, it will be 38 years on 11 the 16th. 12 Q And you are working on Zone 16 in Washington, 13 D.C.; is that correct? 14 A Yes. 15 Q And you have on occasion served as a union 16 steward in Zone 16, correct? 17 A Yes. 18 Q Are you presently a union steward? 19 A No. 20 Q When did you most recently serve as a union 21 steward? 22 A The last three years.</p>

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218	<p>1 Q And how long before that had you served as a 2 union steward? 3 A From '96 -- from '96 to '99. Actually, 4 2000. 5 Q Do you remember a letter carrier who worked 6 in Zone 16 named Leonard Poe? 7 A Leonard Poe? 8 Q Yes. 9 A Yes. Yes, I do. 10 Q And do you remember an occasion when Poe went 11 AWOL for a couple of months from the Postal Service? 12 A Yes, I do. 13 Q And do you remember that when he returned, he 14 would not explain why he had been absent? 15 A That's true too, yes. 16 Q And do you recall that Poe at that time had a 17 significant record of discipline? 18 MR. FURGESON: I'm going -- it's somewhat 19 leading. I think there's a better way to ask these 20 questions. I object. 21 THE COURT: I mean, you can lead up to a 22 point, but you are leading the witness. Have the</p>	220	<p>1 removal grievance was? 2 A No, I don't. I have no idea. The only 3 thing that was mentioned to me was that -- that because 4 he left the Post Office and moved out of the area. I 5 don't even think they went through with the grievance. 6 THE COURT: I'm sorry, when you say he left 7 the Post Office, do you mean he left that station or he 8 -- 9 THE WITNESS: No, he left. 10 THE COURT: -- he left -- he just -- 11 THE WITNESS: He left the service. 12 THE COURT: He left the service. 13 THE WITNESS: Yes, totally. 14 THE COURT: Okay. 15 BY MR. NOBLE: 16 Q Did you work yesterday? 17 A No. Yesterday was my off day. 18 Q Did you work the day before yesterday? 19 A Yes. 20 Q And how long did your route take you that 21 day? 22 A If you can just give me a second.</p>
219	<p>1 witness elicit the testimony. 2 BY MR. NOBLE: 3 Q Do you know whether Poe had -- at the point 4 he went AWOL for a couple of months, do you know 5 whether he had previous discipline for attendance- 6 related matters? 7 A Yes, I do. Some of his discipline was 8 issued at Friendship where others was issued out of -- 9 I can't remember. I think it was Zone 9 or 10 he was 10 in. But, yes, he had had previous discipline. 11 Q Do you know an employee named Amato Ingram? 12 A Yes. Yes, I do. 13 Q And did you represent Ingram when the Postal 14 Service attempted to remove him for failure to be 15 regular in attendance/AWOL? 16 A Yes, I did. 17 Q And did Ingram have at the time of the 18 removal any prior discipline for attendance-related 19 matters? 20 A To the best of my knowledge, if my memory 21 serves me well, I think he had a letter of warning. 22 Q Do you remember what the disposition of the</p>	221	<p>1 Q Tell me the ballpark? 2 A Approximately 11 -- 11 hours, 15 minutes. 3 MR. NOBLE: Okay. This is Exhibit J, so 4 everybody should have this. 5 THE COURT: Okay. 6 BY MR. NOBLE: 7 Q I'm showing you Appellant's Exhibit J. Can 8 you identify that package of documents? 9 A (Examining the document.) 10 This is the grievance that I filed on your behalf 11 because the Post Office was not paying you for 12 holidays. 13 Q And did you attempt to initiate a grievance, 14 the first step grievance procedure? 15 A Yes, I did. 16 Q And with whom did you do that? 17 A If my memory serves me well, I believe I 18 tried to sit down with Mr. William French. 19 Q Can you tell by looking at the papers whether 20 it was Mr. French you tried to meet with? 21 A Yes, it was Mr. French. Yes. 22 Q And were you successful in meeting with Mr.</p>

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222	<p>1 French? 2 A No, I was not. 3 Q What happened? 4 A They refused to meet with me or, as I like 5 to say, they tried to make the grievances untimely by 6 avoiding meeting with me. 7 Q Does that package of materials indicate that 8 you made an informations request to management about 9 those grievances? 10 A (Examining the document.) 11 Let me see that in here. Yes, it's a request here for 12 information And it is signed by William French on 13 11/26/10. 14 Q And did Mr. French provide you with any 15 maerials which you requested? 16 A No, he did not. 17 MR. NOBLE: That's all I have. 18 THE COURT: Mr. Furgeson? 19 MR. FURGESON: I have a few questions here. 20 CROSS EXAMINATION 21 BY MR. FURGESON: 22 Q Mr. Poe was out how long on LWOP or AWOL?</p>	224	<p>1 Q And he provided no documentation? 2 A No documentation. No explanation, nothing. 3 Q Did you represent him? 4 A Yes. 5 Q And do you know why they allowed him to come 6 back to work? 7 A No, I don't. I have no idea. 8 Q They just said it was okay? 9 A No, they didn't say anything. They just 10 filled out the paperwork and gave him a letter in a 11 couple of days. 12 Q And was Mr. Ingram -- how much AWOL did he 13 have? 14 A Mr. Ingram had about three days of AWOL. He 15 had been -- it was three days. I think it had happened 16 about three times. 17 Q And who issued him discipline? 18 A Mr. Colter and Mr. French. 19 Q The discipline in relation to Mr. Poe was 20 that resolved through the grievance procedure or was it 21 just accepted? 22 A No. I don't know. I don't have the</p>
223	<p>1 A I can't remember the exact length of time, 2 but just to give you a ballpark figure somewhere 3 between a month or two. 4 Q And what happened to him? Was he 5 disciplined? 6 A He was brought in. He was taken into the 7 office. They talked to him. He had no explanation. 8 He went back to his route and a few days later they 9 called him back in and gave him a letter. 10 Q A letter of? 11 A A letter of warning, 7-day suspension, 14- 12 day suspension. 13 Q And who did that? Who issued that? 14 A The supervisor, I think, Brandon Toatley did 15 it one time and Mr. Sterling Colter and William French 16 did it another time. 17 Q For AWOL? 18 A For AWOL, yes. 19 Q Okay. And how much AWOL for each time? 20 A It's hard to remember off the top of my 21 head. He had anywhere from seven days to 28 days each 22 time they called him in.</p>	225	<p>1 resolution, so I can't tell you exactly what happened 2 with the case. 3 Q Do you have the discipline? 4 A No. I don't have any of the records. 5 Q Why wouldn't you bring them, if you had them 6 -- if you met with him? 7 A Because I'm no longer the steward. 8 Q Okay. Now, what about -- is the mail line -- 9 does the mail line pick up in November and December? 10 A Yes, if does. 11 Q Now, Mr. -- you claim Mr. French didn't 12 provide you -- to meet with you -- 13 A No, he did not. 14 Q -- and you moved on to the next step of the 15 discipline; isn't that correct? 16 A Yes. 17 Q Okay. And so Mr. -- the grievance will still 18 be heard by somebody at another level, right? 19 A Yes. Yes. It goes to the formal labor 20 represenative. 21 Q And if someone can't meet with you in a 22 timely fashion, that's what you do as a union steward?</p>

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226	1 A Yes. I move it up to the next level. 2 Q And Mr. French did not provide some of the 3 requested material information? 4 A That's correct. 5 Q And what happened to that? Did you file a 6 grievance on that? 7 A That goes up with the grievance. 8 Q And do you know what's happened to that 9 grievance? 10 A No, I don't. 11 MR. NOBLE: I'm sorry, I missed the last 12 question. 13 THE WITNESS: He said did I know what 14 happened with tht grievance, 15 MR. NOBLE: To which grievance? 16 THE WITNESS: The one with Mr. Ingram. 17 BY MR. FURGESON: 18 Q No, I'm not talking about that grievence, I'm 19 talking about the grievance that had to do with the -- 20 it was the one where you claim Mr. French did not meet 21 with you, and that had to do with Mr. Noble's holiday 22 pay; is that correct?	228	1 A Yes, because I'm sure they have copies in 2 all the files. 3 Q And who would you have gotten that from? 4 A I would either ask the secretary or would 5 have asked Mr. Branson. 6 Q Mr. Branson was here; he testified eralier 7 today, right? 8 A Yes, he did. 9 MR. FURGESON: I have no further questions. 10 THE COURT: Mr. Noble? 11 MR. NOBLE: I have no further questions. 12 THE COURT: Okay, Sir, thank you very much 13 for testimony today. I'm going to ask that not discuss 14 your testimony with anyone until after the close of 15 this hearing. 16 THE WITNESS: Okay. 17 THE COURT: You are excused from these 18 proceedings. Thank you very much. 19 THE WITNESS: Thank you very much. 20 THE COURT: Enjoy your weekend. 21 Mr. Tucker, Would you mind getting Mr. Minor, 22 please.
227	1 A Yes. Yes. 2 Q And that, as far as you know, you don't know 3 what's happened to that grievance; is that correct? 4 A No, I don't. That was the one thing I spoke 5 with the current steward about. There were a lot of 6 resolutions that I did not receive. And I was asking 7 him if he received them, and he said, he had a stack of 8 them. He'd have to go through them. 9 Q Now, did you file grievances on Mr. Poe and 10 Mr. Ingram both? 11 A Yes. 12 Q And did those ever get resolved or you're not 13 sure? 14 A I can't remember off the top of my head. 15 Q And you haven't maintained copies of those 16 disciplines again, so... 17 A No. No, once I'm no longer steward, I shred 18 everything that I have and then dispose of it. 19 Q And you weren't asked to try to get that 20 information to bring here today? 21 A No. 22 Q Could you have gotten it through your union?	229	1 THE WITNESS: Sure. 2 THE COURT: Thank you. 3 (The witness was excused.) 4 THE COURT: Hi, are you Mr. Minor? 5 MR. MINOR: Yes. 6 THE COURT: Hi, Mr. Minor, is Mr. Toatley 7 upstairs or is he downstairs? 8 MR. MINOR: He's just outside the door here. 9 THE COURT: Very good. Okay, thank you. 10 My name is Judge Turbitt. First, I want to 11 thank you for your patience. I know you've waited for 12 a while. 13 MR. MINOR: Sure. 14 THE COURT: Before we begin with your 15 testimony, sir, I need to ask you whether you have an 16 objection to taking an oath? 17 MR. MINOR: No. 18 THE COURT: Okay. Remain standing, please, 19 and raise your right hand and repeat after me, sir. I 20 -- please state your name? 21 MR. MINOR: I, Louis Minor -- 22 THE COURT: -- do solemnly swear --

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230	<p>1 MR. MINOR: -- do solemnly swear -- 2 THE COURT: -- to tell the truth -- 3 MR. MINOR: -- to tell the truth -- 4 THE COURT: -- the whole truth -- 5 MR. MINOR; -- the whole truth -- 6 THE COURT: -- and nothing but the truth -- 7 MR. MINOR: -- and nothing but the truth -- 8 THE COURT: -- so help me God. 9 MR. MINOR: -- so help me God. 10 THE COURT: Thank you, sir. Please be 11 seated. 12 Mr. Noble, you may proceed. 13 WHEREUPON, 14 LOUIS MINOR 15 called as a witness, having been first duly sworn, was 16 examined and testified as follows: 17 DIRECT EXAMINATION 18 BY MR. NOBLE: 19 Q Mr. Minor, you are a letter carrier employee 20 of the United States Postal Service, correct? 21 A Yes. 22 Q And you are also a representative of the</p>	232	<p>1 union (sic), correct? 2 A Correct. 3 Q And you gave testimony in that hearing, 4 correct? 5 A Yes. 6 Q And the testimony that you gave at that 7 hearing was about my attendance record, correct? 8 THE COURT: Why don't you tell us what you 9 testified to. 10 THE WITNESS: I believe I was asked a 11 question about 3972s, which is what we relate to the 12 attendance, yes. 13 BY MR. NOBLE: 14 Q What else did you testify about? 15 A I believe that was the only thing. I don't 16 remember any other questions. 17 Q You testified about my attendance record for 18 the last four years, correct? 19 A Correct. It was four sets of 3972s, I think 20 it was two documents apiece. 21 Q Okay. And what did my attendance for the 22 last four years look like?</p>
231	<p>1 union; is that correct? 2 A I'm sorry, I didn't -- 3 Q You are also a representative of the union, 4 correct? 5 A Yes, I am. Yes, I am. 6 Q What position do you hold with the union? 7 A Shop steward formally and advocate -- 8 arbitration advocate. 9 Q And do you also discuss grievances at the 10 second step of the grievance procedure? 11 A Yes. 12 Q It's called a formal Step A representative, 13 correct? 14 A Correct, right. Step 2, yes. 15 Q You testified at a NLRB hearing on July 21st, 16 2011, correct? 17 A Well, I'm not sure of the date, but, yeah, I 18 was there. I don't know the exact date. 19 Q But it was in July 2011, correct? 20 A Yes. Yes. 21 Q Okay. And at issue in that proceeding was an 22 unfair labor practice charge I had filed against the</p>	233	<p>1 A Uh -- I mean, if I recall correctly, 2 somewhere in the neighborhood of 75 days worked in four 3 years, I mean give or take a couple. I don't have any 4 of those documents with me, so I really can't be 100 5 percent certain. 6 MR. NOBLE: I have no further questions. 7 THE COURT: Mr. Furgeson? 8 MR. FURGESON: I have no questions. 9 THE COURT: Okay. Mr. Minor, thank you very 10 much -- 11 THE WITNESS: Sure. 12 THE COURT: I want to ask you not to discuss 13 your testimony with anyone until after the close of 14 this hearing, which may be this evening. We don't 15 know. If you don't know, contact Mr. Noble and ask 16 him. Don't talk to anybody before the close. If 17 anybody asks, just say you can't. You are excused from 18 these proceedings, Mr. Minor. Thank you. 19 THE WITNESS: Okay, thank you. 20 Would you be kind enough to let Mr. Toatley 21 know -- 22 MR. NOBLE: No, I'm going to pass on Mr.</p>

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234	<p>1 Toatley and go directly to myself. 2 THE COURT: Is Mr. Toatley being excused? 3 MR. NOBLE: Yes. 4 THE COURT: Okay. Would you -- you can't 5 revisit that. 6 MR. NOBLE: I understand. 7 THE COURT: Okay. Please tell Mr. Toatley -- 8 ask him to come in. 9 THE WITNESS: Okay. 10 (The witness was excused.) 11 THE COURT: Is Mr. Toatley -- I thought he 12 was right outside. 13 MR. FURGESON: I thought he was out there 14 too. 15 Your Honor, he's not out there. He may have 16 gone downstairs or the restroom; I have no idea. 17 THE COURT: Okay. Let's keep going. If you 18 see him, please -- either of you, thank you for -- 19 MR. FURGESON: I won't see him if I'm in 20 here. 21 THE COURT: I understand. But when you see 22 him or whatever, please -- I know that he waited all</p>	236	<p>1 MR. NOBLE: Not all of them. 2 THE COURT: My goodness. 3 MR. NOBLE: The total -- the total is about 4 60. I don't want to walk through them all, but I would 5 like to walk through some of them. 6 THE COURT: I wish you had done -- my golly, 7 we -- I wish you had done this with the exhibits that 8 you've had for a long time. This case, I got back in 9 August. You could have walked through a chronological 10 series of events through these exhibits. To do this on 11 the day of the hearing -- I'll tell you what, I will 12 allow you to do in writing, a chronology. You can tie 13 it to the exhibits. You said you haven't had the time. 14 You can do a chronology. I am to receive it by close 15 of business this Monday. 16 You can testify that the chronology that you 17 are about to submit to me and to the Agency is true and 18 accurate to the best of your ability. But to go 19 through all of these exhibits in the hearing, if we had 20 a chronology before us already, I think that would 21 possibly expedite the process and I would certainly 22 want to give you the opportunity to talk about all</p>
235	<p>1 day long. Please apologize that he had to wait, but 2 thank him for his patience. 3 Let's go with you, Mr. Noble. 4 MR. NOBLE: I have never represented myself 5 before, Your Honor. How would you prefer that I 6 proceed? 7 THE COURT: You have two choices. The two 8 choices are, it's very awkward, you are the 9 representative as well as the witness. 10 MR. NOBLE: Yes. 11 THE COURT: It's very awkward for you to ask 12 yourself questions and answer questions. You could 13 possibly do it that way. I've never seen anybody treat 14 it that way. Basically, probably the best way is for 15 you to tell me your version of events. Just initially 16 tell me what you have to say on the stand, and then Mr. 17 Furgeson gets an opportunity to cross examine. 18 MR. NOBLE: Okay. I would like to walk 19 through some of the exhibits that I brought with me. 20 THE COURT: You mean all of those exhibits 21 that you gave us yesterday, you want to walk through 22 all of those kinds of exhibits?</p>	237	<p>1 these things, but to talk about 60 exhibits and to walk 2 through us that we just got yesterday is -- 3 MR. NOBLE: Then after I submit the written 4 testimony, Mr. Furgeson will have an opportunity to 5 cross examine me live? 6 THE COURT: No. No, I'm not going to -- no, 7 basically, that's it, but now you get to testify about 8 your version of events not using each and every 9 exhibit. Just tell me what happened, sir. And if you 10 want to tie it later to an exhibit, you go ahead. And 11 the record will remain open Monday for that. No more - 12 - no more affirmative defenses. No more documents, no 13 more, oh, I just learned something else happened to me. 14 No more I need more evidence. No more anything. No 15 more motions, no more objections, the record is closed 16 except for you to have a chronology of events using 17 these exhibits that you've just gave to us, these 60 18 exhibits that you just gave to us. Even though you 19 should have done it before, sir, the chronology of 20 events should have been done with the prehearing 21 submission. 22 We had two prehearing conferences in this</p>

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238	<p>1 case.</p> <p>2 MR. NOBLE: Your Honor, may I make one point</p> <p>3 in my own defense?</p> <p>4 THE COURT: No. Please continue -- honestly,</p> <p>5 we have spent tons of time. I've given you plenty of</p> <p>6 time to make many observations in your own defense.</p> <p>7 You have put them in writing. I've responded to them.</p> <p>8 I doubt it's going to be anything new.</p> <p>9 You may now testify -- are you willing -- do</p> <p>10 you have an objection, sir, to taking an oath?</p> <p>11 MR. NOBLE: No.</p> <p>12 THE COURT: Okay. Please come to the witness</p> <p>13 stand.</p> <p>14 MR. FURGESON: Just for clarification -- I</p> <p>15 hate to ask, but I assume the record is closed; I don't</p> <p>16 get a chance to respond to what he's submitting, the</p> <p>17 chronology; is that correct?</p> <p>18 THE COURT: I'm rewarding that behavior. I</p> <p>19 don't like to do this. We -- this could have been done</p> <p>20 -- no, you know what, go ahead. You're going to do it</p> <p>21 right now. The record will be closed after this. You</p> <p>22 walk us through the 60 exhibits, Mr. Noble, and that's</p>	240	<p>1 THE COURT: -- so help you God.</p> <p>2 MR. NOBLE: -- so help me God.</p> <p>3 THE COURT: Okay, sir. Wait one second for</p> <p>4 the Agency representative to come back. I believe Mr.</p> <p>5 Toatley just walked in the room.</p> <p>6 Was that Mr. Toatley?</p> <p>7 MR. FURGESON: Yes, I let him go.</p> <p>8 THE COURT: Okay, thank you. WhEREUPON,</p> <p>9 DAVID W. NOBLE, JR.</p> <p>10 called as a witness, having been first duly</p> <p>11 sworn, was examined and testified as follows:</p> <p>12 THE COURT: Tell me what your version of</p> <p>13 events is, Mr. Noble.</p> <p>14 DIRECT TESTIMONY</p> <p>15 THE WITNESS: I've been a letter carrier</p> <p>16 employee of the Postal Service since 1975. For almost</p> <p>17 15 years, I took leave the Postal Service to work on DF</p> <p>18 for the National Association of Letter Carriers, which</p> <p>19 is the union that represents Postal Service letter</p> <p>20 carriers.</p> <p>21 For the first two of those 15 years, I worked</p> <p>22 in the union's Minneapolis, Minnesota regional office.</p>
239	<p>1 what we're going to do. The record will close this</p> <p>2 evening. I'm not going to keep the record open for any</p> <p>3 more. You are going to respond, and he's going to want</p> <p>4 to respond, no more.</p> <p>5 Mr. Noble, please come here, you are going to</p> <p>6 take an oath.</p> <p>7 MR. NOBLE: May I bring the exhibits with me?</p> <p>8 THE COURT: Would it be easier for you to sit</p> <p>9 at your table there --</p> <p>10 MR. NOBLE: Yes.</p> <p>11 THE COURT: -- to testify?</p> <p>12 Okay. Stand over there, please.</p> <p>13 I -- please state your name, sir.</p> <p>14 MR. NOBLE: I, David W. Noble, Jr., --</p> <p>15 THE COURT: Do solemnly swear --</p> <p>16 MR. NOBLE: -- do solemnly swear --</p> <p>17 THE COURT: -- to tell the truth --</p> <p>18 MR. NOBLE: -- to tell the truth --</p> <p>19 THE COURT: -- the whole truth --</p> <p>20 MR. NOBLE: -- the whole truth --</p> <p>21 THE COURT: -- and nothing but the truth --</p> <p>22 MR. NOBLE: -- and nothing but the truth --</p>	241	<p>1 THE COURT: Okay. I don't need to know your</p> <p>2 entire career, Mr. Noble. I don't. You can put the</p> <p>3 chronology of your career in writing. I believe I</p> <p>4 already have all of this in documentation. We don't</p> <p>5 need to go back through your entire career.</p> <p>6 You have said many times, and so I respect</p> <p>7 the fact that you've had a long tenure, but we don't</p> <p>8 need to go back to 1980s about union grievances that</p> <p>9 were filed or anything that you did.</p> <p>10 THE WITNESS: Well, I'm not going to talk</p> <p>11 about grievances, Your Honor. I would like to talk</p> <p>12 briefly, however, about some experiences that I had in</p> <p>13 the 1980s, which --</p> <p>14 THE COURT: That is too far back. Sir,</p> <p>15 that's over 20 years -- that's 30 years ago. You don't</p> <p>16 get to talk about something that happened 30 years ago.</p> <p>17 You get to talk about -- I'll allow you to talk about</p> <p>18 anything that's happened in the last five years.</p> <p>19 THE WITNESS: Okay.</p> <p>20 May I make an offer of proof, Your Honor?</p> <p>21 THE COURT: Please, briefly.</p> <p>22 THE WITNESS: If permitted to testify about</p>

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242	<p>1 my experiences in the '80s, I would say that I worked 2 for almost a decade in a process, a joint process with 3 the Postal Service designed to make the Postal Service 4 more participative, less authoritarian, that I worked 5 with -- mostly with an Assistant Postmaster General 6 named Gene Hagberg, that he and I spent a decade flying 7 around the country talking to management about how it 8 would be actually a more productive Postal Service if 9 instead of acting like prison guards, supervisors acted 10 like coaches or teachers. 11 And that experience has colored my entire 12 career with the Postal Service. 13 THE COURT: Okay. You may continue. I'll 14 even allow you to testify to what you just said. So, 15 you now have testimony on that. Go ahead. 16 THE WITNESS: Well, I guess that the next 17 obvious starting point for that is when I had emergency 18 heart surgery, which was in August 2008 -- 19 I need to take a couple minutes. 20 THE COURT: Okay. We will take a comfort 21 break. It is now 3:30 -- it's about 3:40. We will 22 come back at 3:50.</p>
243	<p>1 [Short recess.] 2 THE COURT: We are back on the record. 3 MR. NOBLE: I'm afraid, Your Honor, that I 4 have not yet regained my composure. I think that 5 trying to proceed will be very difficult for everybody. 6 I'd like to come back on Monday. 7 THE COURT: We are all here today, sir. I've 8 heard the witnesses today. I want you to regain your 9 composure, that's why I gave you 10 minutes. I can 10 give you five more minutes, but we are all here today 11 and I would like to proceed, to go forward. I have 12 rescheduled this hearing several times and I would like 13 to go forward. 14 MR. NOBLE: Yes. 15 THE COURT: Do you want that door shut? 16 Do you want five more minutes, sir? I'm 17 willing to give you five more minutes? 18 MR. NOBLE: Five more minutes isn't going to 19 help. 20 THE COURT: Okay. 21 When we went off the record, you began 22 discussing your emergency heart surgery in August of</p>
244	<p>1 2008. 2 Mr. Noble. 3 (Zack Noble and Michelle Ahearn exit 4 the hearing room.) 5 THE COURT: Here is a box. 6 I believe there is a basket behind you if you 7 want to use the basket. 8 I know that this is emotional for you. Is 9 there something that we can do to make it easier to go 10 through your testimony today? 11 MR. NOBLE: I don't think so. 12 THE COURT: It is your choice whether you 13 want to testify. You are not -- I want you to be 14 aware, you are not forced to testify. You do not have 15 to testify. You've been approved as a witness, but you 16 do not under any circumstances have to testify. That's 17 your choice. 18 MR. NOBLE: No. I have to testify. I am 19 certainly not going to be able to tie this all into 20 exhibits in a chronology. 21 MR. FURGESON: As not to -- I mean, to help 22 the process, if he wants to put it together in a</p>
245	<p>1 chronology, written chronology, I'll maybe rue the day 2 I do it, but I'll waive any response to the chronology 3 of events. 4 THE COURT: Could you get that to me by 12:00 5 noon on Monday, Mr. Noble? And then I can let you 6 respond by 5:00 p.m., Mr. Furgeson? 7 MR. FURGESON: That will be fine. 8 THE COURT: Mr. Noble, that way you would 9 have the weekend, you would have Saturday and Sunday 10 and part of Monday. Some of this has been done, as you 11 well know. I mean, some of this had in terms of what 12 has happened -- I know that there has been chronologies 13 in other -- at least, maybe not lengthy, but there have 14 been chronologies in other cases that you've done. I 15 read them. And if you wanted to tie that, using that 16 with some exhibits, you can do that. 17 THE WITNESS: (No verbal response.) 18 THE COURT: I will give you, Mr. Noble, to 19 the close of business on Monday -- Monday, that is this 20 Monday, November -- 21 MR. FURGESON: The 7th, I believe. 22 THE COURT: November 7th, 5:00 p.m. Eastern.</p>

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246	<p>1 I am to receive a written chronology of events. You 2 can tie the exhibits together with that testimony, and 3 you can swear under oath, if you want, you don't have 4 to, that the chronology of events is a true and 5 accurate recitation of what happened. 6 And I will give you till Tuesday, the close 7 of business 5:00 p.m. to receive the Agency's response 8 on that chronology? 9 MR. FURGESON: Very well. That's acceptable. 10 THE COURT: Mr. Noble, that will give you 11 some more time to collect your thoughts and sit down 12 and go through the paperwork. Does that help? 13 THE WITNESS: I think that it would be less 14 painful than trying to do it now. 15 THE COURT: Okay. 16 THE WITNESS: I'll do it in the form of a 17 declaration. 18 THE COURT: Okay. I'm happy to do this to 19 accommodate this. I just want to let you know, I don't 20 want any surprises, so here's what I'm letting you know 21 upfront. I have to receive it by Monday, 5:00 p.m. I 22 have to receive it, Mr. Noble, by 5:00 p.m. on Monday,</p>
247	<p>1 Eastern time. No extensions will be granted to either 2 side. 3 If I don't get by 5:00 p.m. on Monday, it's 4 done if I don't get it -- if I don't receive it. If it 5 is after that, I'm not looking at it. 6 If the Agency doesn't respond by 5:00 p.m. on 7 Tuesday, November 8th, I'm not granting any extensions. 8 You don't get a second bite of the apple. That's it. 9 MR. FURGESON: It's understood. 10 THE COURT: Okay. Nothing other than this is 11 entered into the record. No more, other than the 12 testimony with the chronology of events, that's it. 13 That's all that is entered into the record, and the 14 Agency's objection to -- that cross examination, what 15 have you, of that testimony. That's it. 16 Is that understood? 17 MR. FURGESON: Yes. 18 MR. NOBLE: Yes. 19 THE COURT: Okay. Are there any questions 20 about what we just did? 21 MR. FURGESON: No, sir. 22 THE COURT: Mr. Noble, are there any</p>
248	<p>1 questions? 2 MR. NOBLE: I have no questions, Your Honor. 3 THE COURT: Okay. Now, the next question is, 4 do you also want to say something on the record? You 5 can. You don't have to. Do you want to say anything 6 else on the record? 7 MR. NOBLE: No. 8 THE COURT: Okay. And, as I stated earlier, 9 I will let you go back in time up to five years. You 10 already have your statement on the record, which is 11 also an offer of proof that you had done some union 12 work for 30 years with the Postal Service, and it 13 colored your view of the Agency. 14 Then you can go back in time five years. 15 Having allowed for the testimony in this 16 hearing, the presentation of evidence from both sides, 17 the hearing in this matter is now ending. As I stated, 18 I will allow the record to remain open for the limited 19 purpose that I advised both parties of regarding Mr. 20 Noble's direct testimony and regarding the Agency's 21 objections to cross examination of that testimony, 22 written testimony.</p>
249	<p>1 Gentlemen, thank you very much. 2 MR. NOBLE: Thank you. 3 (Whereupon, at 4:06 p.m., the hearing 4 in David Noble, Jr. v United States 5 Postal Service was adjourned.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>

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